

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA, : 15-CR-637(KAM)

-against- : United States Courthouse
: Brooklyn, New York

MARTIN SHKRELI, : Friday, June 30, 2017
: 9:00 a.m.

Defendant.

APPENDANCES:

For the Government: BRIDGET M. ROHDE, ESQ.
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25 Proceedings recorded by computerized stenography. Transcript produced by Computer-aided Transcription.

1 (In open court; outside the presence of the jury.)

2 THE COURT: United States versus Martin Shkreli,
3 15-CR-637. All counsel are present.

4 I am happy to hear from you.

5 MS. KASULIS: Your Honor, we were able to come to an
6 agreement with respect to the to the limiting instruction that
7 we spoke about yesterday regarding the Merrill Lynch witness,
8 Steve Stich, so we can hand it up to the Court.

9 THE COURT: Is he the next witness?

10 MS. KASULIS: He is not. I believe he will be the
11 third witness for the day. So we can hand it up to the Court
12 prior to that.

13 THE COURT: Would you like me to read it before he
14 is sworn and after he testifies?

15 MS. KASULIS: After he testifies about the
16 misrepresentation at issue.

17 THE COURT: All right.

18 MR. KAPLAN: Yes.

19 THE COURT: When that occurs, you will ask me to
20 read the instruction.

21 MS. KASULIS: Yes.

22 THE COURT: Great. Thank you.

23 MR. KAPLAN: Yes.

24 THE COURT: The jurors are ready to come in.

25 (Jury enters the courtroom.)

Austin - direct - Smith

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1 THE COURT: Good morning, ladies and gentlemen of
2 the jury. Please be seated, everybody.

3 Is the Government prepared to call its next witness?

4 MS. KASULIS: Yes, your Honor.

5 The Government calls Josiah Austin.

6 THE COURT: Thank you.

7 Good morning, sir, please step up to the witness
8 stand. Ms. Jackson will administer the oath.

9 THE WITNESS: Good morning.

10 (The witness was sworn/affirmed by the Clerk.)

11 THE COURTRoom DEPUTY: Please have a seat and state
12 and spell your full name for the record.

13 THE WITNESS: Josiah Thompson Austin. Date of
14 birth, 4/9/47.

15 THE COURT: Sir, just the spelling of your name.

16 THE WITNESS: J-O-S-I-A-H, middle name Thompson,
17 T-H-O-M-P-S-O-N. Last name Austin, A-U-S-T-I-N.

18 THE COURT: Thank you, sir. Please proceed.

19 **JOSIAH THOMPSON AUSTIN,**

20 called by the Government, having been duly

21 sworn, was examined and testified as follows:

22 DIRECT EXAMINATION

23 BY MS. SMITH:

24 Q Good morning, Mr. Austin.

25 A Good morning.

Austin - direct - Smith

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1 Q How old are you?

2 A 70.

3 Q Where do you live?

4 A I live in Arizona.

5 Q What is your highest level of education?

6 A I graduated from college and I did a little bit of
7 graduate work.

8 Q What college did you attend?

9 A University of Denver.

10 Q In what subject was your degree?

11 A Finance.

12 Q What did you do for work after you graduated college?

13 A I was a stock broker for a few years with Baker Watts in
14 Baltimore. Then I was a commercial banker with Manufacturers
15 Hanover in New York for a little while.

16 Q What did you do after you worked for Manufacturers
17 Hanover?

18 A After Manufacturers Hanover, I went off on my own and did
19 investments on my own, mainly financial institution.

20 Q When you were doing investments on your own, were you
21 doing it through personal accounts or through an entity?

22 A Well, personal accounts and an entity that my wife and
23 all own called El Coronado Holdings.

24 Q When was El Coronado Holdings founded?

25 A Probably about -- somewhere around 1990, but I am not

Austin - direct - Smith

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1 actually sure of the date.

2 Q And until when was El Coronado Holdings an entity?

3 A 2013.

4 Q What kinds of investments did El Coronado Holdings make?

5 A Pretty eclectic. It started off mainly in financial
6 institutions and then it moved on to oil and gas, biotech,
7 many public corporations, some hedge funds.

8 Q Who made the investment decisions for El Coronado
9 Holdings?

10 A I did.

11 Q Where did you get the ideas where to invest in on behalf
12 of El Coronado Holdings?

13 A Oh, a number of people. Frank Ferrara, Jennie
14 Montgomery, Sheldon Clark, Bill Rueckert.

15 You know, in 2006, I got some names from Martin
16 Shkreli, Tom Sheldon down in Florida. There are any number of
17 people that I would get ideas from.

18 Q In addition to getting ideas from other people, did you
19 also do your own research on various investment ideas?

20 A Yes.

21 Q In addition to running El Coronado Holdings between the
22 1990 and 2013 periods, what other positions or jobs did you
23 hold?

24 A I was a director of a number of public companies, New
25 York Bank Corp., North Fork, Monterey Bay Bank, Good Rich

Austin - direct - Smith

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1 Petroleum.

2 Q In the 2006 time period that you mentioned, what was the
3 size of El Coronado Holdings in terms of assets?

4 A El Coronado Holdings was in excess of 300 million.

5 Q You mentioned earlier the defendant, Martin Shkreli. How
6 did you first learn about Mr. Shkreli?

7 A I met Martin at UBS when I was visiting Matt Moustaffik
8 and Ned Lord.

9 Q And what is UBS?

10 A UBS is a large Swiss Bank.

11 Q Why were you working with Ned Lord and Matt Moustaffik at
12 UBS?

13 A I had an account there.

14 Q What did Ned Lord and Matt Moustaffik do in connection
15 with that account?

16 A Basically they just -- they, you know, it was a brokerage
17 account. I would buy and sell stocks through that account.
18 They would also supply me with some ideas of stocks.

19 Q Where were you living at the time that you met Mr.
20 Shkreli?

21 A I was living in Arizona.

22 Q What city did you meet Mr. Shkreli in?

23 A Excuse me?

24 Q What city did you meet Mr. Shkreli in?

25 A New York.

Austin - direct - Smith

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1 Q What were you doing in New York at the time that you met
2 him?

3 A Well, I was on the board of New York Bank -- no, when I
4 was on the board of North Fork, I would have board meetings
5 and generally, when I come into town, I would stop by UBS or i
6 other people that I knew and got ideas from.

7 Q Approximately what time period was it that you met Mr.
8 Shkreli?

9 A I would say it would be 2005, maybe 2005, 2006.

10 Q What do you remember from Mr. Shkreli about those first
11 meetings?

12 A Young. I thought Martin was young, smart, a little
13 cocky. You know, I like Martin. Knew biotech. I did have
14 some biotech investments, not many, so I was very interested
15 in his ideas.

16 Q Mr. Austin, would you please take a look around the
17 courtroom and tell us if you see the defendant Martin Shkreli?

18 A Over on the right. My right side on the table next to
19 the gentleman with the green tie.

20 THE COURT: We will note that the witness has
21 identified Mr. Shkreli. Thank you.

22 Q In the time period when the defendant was at UBS, what
23 were your interactions with him like?

24 A I can't remember how long he was at UBS. I don't think
25 it was too long, when I would go there, I would talk to him

Austin - direct - Smith

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1 about biotech stocks, that sort of things. I said if he ever
2 went out on his own that I would be interested in continuing
3 to talk to him.

4 Q During the time that he was at UBS, did you discuss
5 biotech stocks with him?

6 A I did.

7 Q I am going to show you what has been marked for
8 identification as Government Exhibit 100-1. It is tab 1 in
9 your binder.

10 Mr. Austin, do you recognize this document?

11 A I recognize it. It's an e-mail from me responding to an
12 e-mail from Martin, June 2005.

13 Q And you sent the e-mail in response to smells Mr.
14 Shkreli's e-mail?

15 A I did.

16 MS. SMITH: Your Honor, the Government Exhibit moves
17 to admit.

18 MR. BRAFMAN: No objection, Your Honor.

19 THE COURT: We will receive Government Exhibit 100-1
20 without objection.

21 (Government's Exhibit 100-1 received in evidence.)

22 Q I am going to point you to the bottom e-mail on the
23 chain, which is Saturday, June 1, 2005, and if you'll notice
24 there, Mr. Shkreli has an e-mail line, it is says Intrepid
25 Capital Management?

Austin - direct - Smith

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1 A Intrepid Capital Management was a hedge fund in New York
2 that Martin was working for.

3 Q Did Mr. Shkreli work there after UBS?

4 A Yes.

5 Q What were your interactions with the defendant like while
6 he was at Intrepid?

7 A You know, I think we had a number of phone conversations
8 and occasionally when I was in New York, I would stop by. I
9 recall going up to the office at least once. I can't remember
10 if I went up to the Intrepid office more than one.

11 Q If you look at the e-mail that is Government Exhibit
12 100-1, Mr. Shkreli says, "Did you notice the move in VPHM?
13 We're very happy about this." And he says, "It is a shame
14 RGEN hasn't had the same move."

15 And you respond, in part, "Yes, from \$2 over \$6 is a
16 very nice move."

17 What were you discussing in this e-mail?

18 A I think he was talking about BioPharma, if I am not
19 mistaken. There was movement in that stock.

20 Q So how often did you and Mr. Shkreli discuss different
21 biotech stocks?

22 A Fairly often. You know, in terms of how many times a
23 week or how many times a month -- you know, it was certainly I
24 think in the -- at one stage it was fairly often. It
25 certainly wasn't on a daily basis, like I would talk to some

Austin - direct - Smith

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1 of the other people.

2 Q Did the defendant ever make recommendations to you
3 regarding particular companies that he thought you should buy
4 stock in?

5 A Yes, he did.

6 Q How often did you take the defendant's recommendations
7 about what stocks to purchase?

8 A I would say I would -- would you repeat the question,
9 please?

10 Q Sure. How often did you take the defendant's
11 recommendations about what stocks to purchase? And I will
12 limit it to this time period when he was at UBS and Intrepid.

13 A I'd say occasionally.

14 Q Did you always take the defendant's recommendations about
15 stock purchases?

16 A No.

17 Q Was the defendant your exclusive source of information
18 about biotech stocks during that period?

19 A No.

20 Q What particular companies do you remember the defendant
21 recommending to you?

22 A Well, BioPharma, I remember that. Chelsea.

23 During that period -- I know there were others, but
24 I can't remember which they were. Basically Chelsea and
25 BioPharma.

Austin - direct - Smith

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1 Later, he was very negative on Mann, but I think
2 that was after 2005, 2006.

3 Q What was Chelsea?

4 A Chelsea was a small biotech that had a drug called
5 Droxidopa that was -- they had headquarters down in the
6 Carolinas and a company that I bought a fair amount of and at
7 one point owned, I think, over 10 percent of it.

8 Q When did the defendant first recommend Chelsea to you?

9 A It was somewhere in the 2005, 2006 time frame.

10 Q Was the defendant your only source of information about
11 Chelsea?

12 A No.

13 Q Was all of the stock that you purchased from Chelsea
14 based on the defendant's recommendations?

15 A Well, certainly the first bit that I bought was probably
16 in part because of the recommendation, but then, you know, I
17 also talked to a number of other people about it and, you
18 know, other brokerage firms, research outfits. So it was --
19 I'd say the initial investment was because of Martin and then
20 I confirmed that, confirmed the idea with others.

21 Q You mentioned that at one point you had over 10 percent
22 of the company of Chelsea; is that correct?

23 A That's correct.

24 Q Was your investment in Chelsea Therapeutics ultimately
25 profitable?

Austin - direct - Smith

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1 A No.

2 Q What was the ultimate result of your investment in
3 Chelsea?

4 A Well, I had a pretty substantial loss.

5 Q What about the other stocks that the defendant
6 recommended, as a whole, were they profitable picks for you?

7 A I'd say no.

8 Q What, if anything, did you promise the defendant in
9 return for his stock recommendations?

10 A I didn't promise anything.

11 You know, when he had the hedge fund, he had the
12 normal, I think -- I'm not sure if it was 20/20, but on just
13 the regular recommendations, there wasn't anything promised.

14 Q You mentioned a hedge fund. Which hedge fund was that?

15 A Elea Capital.

16 Q Separate from Elea Capital, and we will get to Elea
17 Capital in a minute, what, if anything, did you promise the
18 defendant in terms for a stock recommendation outside of Elea
19 Capital?

20 A I can't remember anything.

21 Q At any point during the time that you knew the defendant,
22 did you have an advisory relationship with him?

23 A Well, would you define advisory relationship?

24 Q Did you ever employ the defendant as an investment
25 advisor?

Austin - direct - Smith

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1 A No.

2 Q At any point in time during the time you knew him, was he
3 employed by you in any capacity?

4 A No, other than Elea Capital.

5 Q And in your conversations with the defendant, what, if
6 anything, did he say about his career ambitions?

7 A Well, I think Martin wanted to be -- wanted to be
8 successful, wanted to make a lot of money. I think -- I mean,
9 I thought Martin Shkreli wanted to be Stevie Cohen.

10 Q Who is Stevie Cohen?

11 A Stevie Cohen is a hedge fund guy out of Connecticut, runs
12 S.A.C. Capital, or did run S.A.C. Capital.

13 Q Did Mr. Shkreli ever work at S.A.C. Capital?

14 A I don't think so.

15 Q So you have mentioned Elea Capital. What was Elea
16 Capital?

17 A It was a hedge fund Martin started either in 2005, 2006.
18 I think it was 2006, but it could have been 2005.

19 Q I'm sorry. Go ahead. What did the defendant tell you
20 about Elea Capital?

21 A It was going to be the typical fund and he had some
22 investors that he was -- that were in the fund and he thought
23 it was a good opportunity, so I put some money in Elea
24 Capital.

25 Q Why did you decide to invest in Elea Capital?

Austin - direct - Smith

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1 A Well, I thought Martin was a young, smart individual, and
2 I put money in Elea Capital to make more money.

3 Q How much did you invest in total in Elea Capital?

4 A In total, I put \$3.3 million in Elea Capital in 2006, I
5 think, and then I put 1.5 in 2007, so it would have been, you
6 know, 4.8 million.

7 Q How do you know that this is the amount that you invested
8 in Elea Capital?

9 A I went back and looked at my records.

10 Q Was that investment made all at once or was it made
11 separately over time?

12 A Over time.

13 Q Did you know how many other investors put money into Elea
14 Capital?

15 A I didn't.

16 Q Did you have any role in Elea Capital other than as an
17 investor?

18 A No.

19 Q Once you had invested in Elea Capital, what did the
20 defendant tell you about the fund's performance?

21 A Well, at times he said the performance was good and at
22 times said the performance was not good, and there were one or
23 two times where he asked me to put more money into Elea
24 Capital. So my initial investment was \$2 million and then I
25 added to that, to where it got up to a total of 4.8 million.

Austin - direct - Smith

1197

1 Q How did you receive updates about Elea Capital's
2 performance?

3 A Sometimes by e-mail. Sometimes on the phone.

4 Q And during the time that you were an investor in Elea
5 Capital, how often were you communicating with the defendant?

6 A I'd say on a weekly basis.

7 Q What did you discuss in those communications?

8 A Generally discussed companies. Often Chelsea, because I
9 was very interested in Chelsea and I was constantly buying
10 Chelsea through various brokerage accounts, but he also talked
11 about other companies also.

12 Q Other than the money that you invested in Elea Capital,
13 did the defendant have any ability to buy or sell stock on
14 your behalf?

15 A No.

16 Q Did the defendant ever have discretionary trading
17 authority over your money?

18 A No.

19 Q I am going to show you what has been marked for
20 identification as Government Exhibit 100-2, which is tab 2 in
21 your binder.

22 THE COURT: I just want to make a correction for the
23 record, I believe when you admitted the prior exhibit, I said
24 101-1, and I meant to say 100-1, so if the court reporter
25 would kindly correct that, I would appreciate it.

Austin - direct - Smith

1198

1 MS. SMITH: Thank you, Your Honor.

2 Q Mr. Austin, do you recognize this document?

3 A I recognize the document is from me to somebody that
4 works for me, Cindy Shaw.

5 Q And the bottom e-mail on the document, do you recognize
6 that as well?

7 A Yes, I recognize the document. I don't remember the
8 document, but I recognize it.

9 Q And what is that document?

10 A It is wiring instructions, it says.

11 Q Without reading from the document, just generally, is it
12 an e-mail between you and Mr. Shkreli?

13 A It is an e-mail between Mr. Shkreli and myself, yes.

14 MS. SMITH: Your Honor, the Government moves to
15 admit Government Exhibit 100-2 into evidence.

16 MR. AGNIFILO: No objection.

17 THE COURT: We will admit Government Exhibit 100-2
18 without objection.

19 (Government's Exhibit 100-2 was received in
20 evidence.)

21 Q If you turn to the bottom e-mail on the screen, you had
22 said that these were wiring instructions?

23 A Yes.

24 Q What were these wiring instructions for?

25 A To send \$100,000 to Elea Capital.

Austin - direct - Smith

1199

1 Q So does this document represent one of your investments
2 into Elea Capital?

3 A Yes.

4 THE COURT: Can we clarify who is giving the wiring
5 instructions to whom?

6 MS. SMITH: Yes, your Honor.

7 Q In the bottom e-mail, who is providing you with wiring
8 instructions?

9 A Martin Shkreli sent me the wiring instructions on the
10 bottom e-mail. The top e-mail, I am asking Cindy Shaw to wire
11 \$100,000 to the account of Elea Capital down below.

12 Q Who is Cindy Shaw?

13 A Cindy Shaw is a bookkeeper that works with me.

14 Q And what's the date on which you ask Ms. Shaw to wire the
15 \$100,000 to Elea Capital?

16 A 8/18/2006.

17 Q I am going to show you what has been marked for
18 identification as Government Exhibits 100-3, 100-4, which are
19 tabs 3 and 4 in your binder.

20 Do you recognize these two documents?

21 A I recognize they are documents from me -- one to Martin
22 Shkreli and one from Martin Shkreli to me on -- that's tab 3
23 and the same thing tab 4.

24 MS. SMITH: Your Honor, the Government Exhibit moves
25 to admit 100-3 and 100-4 into evidence.

Austin - direct - Smith

1200

1 MR. BRAFMAN: No objection.

2 THE COURT: We admit those exhibits without
3 objection.

4 (Government's Exhibits 100-3 and 100-4 were received
5 in evidence.)

6 (Exhibit published.)

7 Q Let's start with Government Exhibit 100-3 and if you look
8 at the bottom e-mail on the chain, who is the e-mail from?

9 A It is from Martin.

10 Q And who is it to?

11 A It is to me, Josiah Austin.

12 Q And what is the date of the e-mail?

13 A It is January 26, 2007.

14 Q And what is the subject line?

15 A Margin call.

16 Q The e-mail says, "Hi, Joe, I could really use 500K to
17 meet a call that I'm in. I think AGIX is close to a sure
18 thing and I want to be there in some decent size for you, I
19 think this will be the last time I'll ask for help."

20 Can I ask you what you understand 500K to mean?

21 A \$500,000.

22 Q What was AGIX?

23 A I can't remember. It was a stock that Elea Capital had.

24 Q What did you understand the defendant to be asking you in
25 this e-mail?

Austin - direct - Smith

1201

1 A My understanding was he got a margin call and needed
2 \$500,000 to cover that margin call for Elea Capital.

3 Q And what is a margin call?

4 A A margin call, you know, if you have a margin account,
5 you're buying -- well, margin call is a call that a brokerage
6 account will give you on your margin account if your margin
7 account goes under a certain amount.

8 Q And so what was your response at the top there?

9 A I said for him to call me.

10 Q What's the date of that response?

11 A 1/26/2007.

12 Q If you turn to Government Exhibit 100-4, what is the date
13 on the top e-mail there?

14 A 1/29/07.

15 Q So is this three days after the e-mail we just looked at?

16 A It is.

17 Q If you look at the bottom e-mail for Government Exhibit
18 100-4. What is in the bottom e-mail?

19 A It is an e-mail from somebody to Martin Shkreli with
20 wiring instructions.

21 Q And if you go to the middle of that document of Exhibit
22 100-4.

23 A From Martin Shkreli dated January 29, 2007 to me, which
24 basically just forwards me the wiring instructions.

25 Q And then if you look at the very top e-mail.

Austin - direct - Smith

1202

1 A Right.

2 Q Who is that from?

3 A Well, that's from me, Josiah T. Austin, to Martin
4 Shkreli, and I was confirming that it was for 500,000.

5 Q So did you, in fact, provide Mr. Shkreli with \$500,000 as
6 requested?

7 A Yes. I provided it to Elea Capital.

8 Q And what made you do that in response to the defendant's
9 request?

10 A Well, I was afraid that Elea Capital couldn't cover the
11 margin call and that it would affect the -- all of investments
12 that Elea Capital had.

13 Q Did you and the defendant have any kind of standing
14 agreement that you would personally cover any losses to Elea
15 Capital if the fund got into trouble?

16 A No.

17 Q Was the decision on whether to help the defendant out of
18 situations like this, with a margin call, made on a
19 case-by-case basis?

20 A Yes.

21 Q I'm going to ask you to turn to tabs 5 and 6 in your
22 binder, which are Government Exhibits 100-5 and 100-6 for
23 identification.

24 A Okay.

25 Q Do you recognize these documents?

Austin - direct - Smith

1203

1 A I recognize that they are documents -- e-mails from
2 Martin Shkreli to me and from me to Martin Shkreli.

3 Q And what time frame are these documents?

4 A March 31st, 2007, March 30, 2007 from Martin to me.

5 MR. BRAFMAN: Your Honor, we don't see them on our
6 screen.

7 MS. SMITH: I think it still says searching.

8 MR. AGNIFIL0: As long as the jury can see them. I
9 have a hard copy.

10 THE COURT: The jury cannot see them because they
11 haven't been moved.

12 MR. AGNIFIL0: It just popped up.

13 THE COURT: Okay.

14 (Continued on following page.)

15

16

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Austin - Direct - Smith

1204

1 (Continuing)

2 BY MS. SMITH:

3 Q Mr. Austin, what time frame are these documents?

4 A March 2007.

5 MS. SMITH: Your Honor, the Government moves to
6 admit Government Exhibits 100-5 and 100-6 in to evidence.

7 MR. BRAFMAN: We don't object.

8 THE COURT: We'll admit those two exhibits without
9 objection.

10 (Government Exhibits 100-5 and 100-6 so marked.)

11 (Exhibit published to the jury.)

12 Q Turning to 100-5, the bottom e-mail there, who is this
13 e-mail from?

14 A It's from Martin Shkreli.

15 Q Who is it to?

16 A It is to me, Josiah.

17 Q What's the subject matter or the subject line?

18 A Subject line, Elea Alpha, LP.

19 Q What is it sent on March 30, 2007?

20 A It was.

21 Q If you look at the body of the e-mail, the Defendant
22 writes: My new institutional fund starts on the first. A
23 nominal subscription would be of great help.

24 That's in the first paragraph.

25 If you look at the second paragraph, the third or

Austin - Direct - Smith

1205

1 fourth sentence in says: Perhaps something that does not
2 interest you, but even 100K would go a long way.

3 What does 100K mean?

4 A It means a hundred thousand dollars.

5 Q What is the Defendant asking you in this e-mail?

6 A He's asking me to put a hundred thousand into his Elea
7 Alpha fund, and that if I did that there would be no fees and
8 no lockup.

9 Q What does it mean to have no lockup?

10 A It means I could get out any time I would want.

11 Q What did the Defendant tell you about this new Elea Alpha
12 fund?

13 A I'd have to read the e-mail. I can't remember.

14 Q Would it help refresh your recollection just to read it?

15 A It would.

16 Q Okay.

17 (Pause in proceedings.)

18 A I mean 2007, ten years ago, I can't remember the specific
19 conversation. But my recollection is that it was going to be
20 sort of a low volatility fund and that he had a number of
21 investors, other investors, that were going to go in the fund.

22 Q And, again -- sorry, go ahead.

23 If you -- again, the date of that e-mail is?

24 A That e-mail is March 30, 2007.

25 Q And if you look at the top e-mail, which is March 31,

Austin - Direct - Smith

1206

1 2007, you write: The last few days have been pretty hectic.

2 Sorry I've not gotten back to you. Let's talk this weekend.

3 Is that right?

4 A That's right.

5 Q If you'll turn to Government Exhibit 100-6.

6 A Okay.

7 Q And the two e-mails in this exhibit are dated April 2,
8 2007; is that right?

9 A That's correct.

10 Q So, that's three days after the e-mail that we just
11 looked at?

12 A Yes.

13 Q And if you look at the bottom e-mail, Mr. Shkreli is
14 sending you wire instructions; is that correct?

15 A That's correct.

16 Q What's the account name for the wire instructions?

17 A Elea Capital Management.

18 Q And what was the fund that he had asked you to put a
19 hundred thousand dollars into?

20 A Elea Alpha Fund, I think it was.

21 Elea Alpha, LP.

22 Q And if you look at the top e-mail, what are you directing
23 Ms. Shaw to do in that e-mail?

24 A I'm directing her to wire a hundred thousand dollars.

25 Q So on April 2 you wired a hundred thousand dollars on

Austin - Direct - Smith

1207

1 these instructions; is that right?

2 A That's right.

3 Q Do you know whether or not Elea Alpha was, in fact,
4 founded as a fund?

5 A I don't.

6 MR. AGNIFILO: I'll object to the form of the
7 question, Judge.

8 THE COURT: Overruled.

9 Q If you could turn to what's been marked for
10 identification as Government Exhibit 100-7, do you recognize
11 this document?

12 A I recognize it. It's an e-mail from Martin to me on the
13 lower and from me on to Martin on the top, dated May 24 and
14 26, 2007.

15 MS. SMITH: Your Honor, the Government moves to
16 admit Government Exhibit 100-7 into evidence.

17 MR. AGNIFILO: One minute, your Honor.

18 I believe the bottom portion of the e-mail does not
19 concern Mr. Austin. I'm objecting to the entirety of the
20 exhibit.

21 MS. SMITH: Do you want to go to sidebar?

22 THE COURT: Yes.

23

24 (Continued on the next page.)

25

Sidebar

1208

1 (The following occurred at sidebar.)

2 MR. AGNIFIL0: The basis of the objection is in
3 regard to 100-7. I have no idea who this
4 kevin@vantheedgepoint.com is and I contend all of that is
5 inadmissible hearsay.

6 MS. SMITH: Your Honor, he's in another kind of day
7 trade call and he goes to Mr. Austin again for help and asks
8 him to help him get out of the day trade, and then Mr. Austin
9 responds.

10 There's a series of these. And the reason that
11 these are relevant is because Mr. Shkreli after the fact,
12 after Elea Capital kind of blows up, says that Mr. Austin
13 agreed to backstop the fund. And in fact, what had happened
14 was on a number of occasions Mr. Shkreli had big losses, went
15 to Mr. Austin for help, and on a case-by-case basis he agreed
16 to help.

17 But there's no standing agreement, as he's
18 testified, to backstop the fund, and these are various
19 examples where Mr. Shkreli came to him asking for additional
20 money.

21 THE COURT: The question I have is was this lower
22 part of the e-mail from kevin@vantheedgepoint.com, the May 24,
23 2007 e-mail, was that forwarded to Mr. Austin? It appears
24 that it was.

25 MR. AGNIFIL0: It appears to be.

Sidebar

1209

1 MS. SMITH: So, Mr. Shkreli then forwards that whole
2 bottom part to Mr. Austin to explain why he's stuck in that
3 situation. So, it's context for the request.

4 MR. AGNIFIL0: I still think it's hear --

5 THE COURT: I agree with you that the May 24 portion
6 between Kevin and Mr. Shkreli would be hearsay. But this was
7 then forwarded to Mr. Austin to give him an explanation as to
8 why the ask was being made.

9 We could redact this and admit it that way and have
10 him testify if he's been refreshed as to what happened, but
11 we'll have to take some time to block it out.

12 MR. AGNIFIL0: I don't want to do that. That's
13 fine. I think it's technically hearsay, I lodged my
14 objection, but I'm fine with it coming in.

15 THE COURT: We can ask the Government to redact it,
16 if you want.

17 MR. AGNIFIL0: I don't think it's necessary.

18 THE COURT: What would you like them to do?

19 MR. AGNIFIL0: We'll leave it the way it is.

20 THE COURT: You'll admit it as is?

21 MR. AGNIFIL0: Yes.

22 One thing, since we're here, I'm going to want a
23 charge at some point, because he's not charged with any Elea
24 stuff. Mr. Shkreli was not part of the indictment. I think
25 we need a jury charge on this point and we can put one

Sidebar

1210

1 together.

2 And, also, I just caution -- I know what the
3 Government is trying to do. Since he's not charged with it, I
4 don't know that we have to really prove this beyond a
5 reasonable doubt.

6 MS. SMITH: I'm not planning on -- you've seen the
7 e-mails we've marked as exhibits. We're not going beyond
8 those.

9 MR. BRAFMAN: I think a charge is appropriate.

10 THE COURT: Sure.

11 MR. BRAFMAN: Because in the questioning, I think
12 one of the things that they're implying is that he was lying
13 to Mr. Austin with respect to where the money was even going
14 because it was wired to Elea and he was asking it to go to
15 Elea Alpha.

16 MS. SMITH: We can discuss a limiting instruction on
17 the representation. Once he finishes, then?

18 MR. AGNIFIL0: That would be great.

19 MS. SMITH: We can take a break when he's done and
20 figure out something.

21 THE COURT: All right.

22 MR. AGNIFIL0: Very good.

23

24 (Continued on next page.)

25

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1 (Sidebar ends; in open court.)

2 MR. AGNIFILO: After speaking to the Court at the
3 sidebar, we'll withdraw the objection.

4 THE COURT: Then we will admit Government Exhibit
5 100-7 without objection.

6 (Government Exhibit 100-7 so marked.)

7 (Exhibit published to the jury.)

8 MS. SMITH: Ms. Balbin, can you focus on everything
9 but the top e-mail, to begin with?

10 THE WITNESS: Would you repeat that, please?

11 MS. SMITH: I was asking Ms. Balbin to zoom in on an
12 area for the jury.

13 Q So, if you look at the top e-mail, in the middle, the one
14 from Mr. Shkreli to you, dated May 24, at 9:45 a.m., that has
15 a subject matter forward account status; do you see that
16 e-mail?

17 A I do.

18 Q That e-mail says: Hey, Joe. I'm in a day trading call
19 which doesn't let me day trade again until I deposit it the
20 specific amount. It is 502,092. If you have some liquidity,
21 that'd be great. If not, I think I can talk myself out of it.

22 And if you look below at the forwarded e-mail,
23 there's an e-mail from May 24 at 12:43 p.m., and that says:
24 With the trading you've done today, your margin call has been
25 met; however, the only way the day trading call can be met is

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1 the deposit of cash or marginable assets.

2 I also want you to look at the e-mail below that
3 which says, in part: The day trade call of \$502,000 is still
4 outstanding.

5 So going back to Mr. Shkreli's e-mail to you, what
6 was your understanding of what he was asking you for in this
7 e-mail?

8 A He was asking -- it was my understanding he was asking if
9 I had any liquidity. And if I could send Elea \$502,092, it
10 would clear up his margin account so he could start day
11 trading again.

12 Q What's a margin account?

13 A Margin account is you actually borrow against that
14 account.

15 Q And did you have any understanding of what the Defendant
16 meant by if not having liquidity, I can talk myself out of it?

17 A No, no idea.

18 Q What was your e-mail in response, at the very top?

19 A My response is I've been out until today and just reading
20 your e-mail. Sorry.

21 Q I'm going to show you what's been marked as Government
22 Exhibit 100-10 for identification.

23 A Okay.

24 Q Do you recognize this document?

25 A Yes, I recognize the document. I recognize that it's an

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1213

1 e-mail exchange between Martin and myself.

2 MS. SMITH: Your Honor, the Government moves to
3 admit Government Exhibit 100-10 into evidence.

4 MR. AGNIFILO: No objection.

5 THE COURT: We will receive 100-10.

6 (Government Exhibit 100-10 so marked.)

7 (Exhibit published to the jury.)

8 Q Mr. Austin, I'll direct your attention to the bottom
9 e-mail of the chain. What's the date on that e-mail?

10 A 7/10/2007.

11 Q And who is the e-mail from?

12 A It's from Martin Shkreli to Josiah T. Austin.

13 Q What was the subject matter of that e-mail?

14 A Subject, Up 400K today. Whew.

15 Q What does "400K" mean?

16 A It means the fund is up 400,000.

17 MS. SMITH: And Ms. Balbin, if you can expand this
18 to see the e-mails on top, all three of them. Thanks.

19 Q And your response to that initial e-mail was: The fund?

20 A Yes.

21 Q Why were you asking about whether or not the up 400K was
22 in reference to the fund?

23 A I wanted to make sure that it was the fund that was up
24 \$400,000.

25 Q As opposed to?

Austin - Direct - Smith

1214

1 A As opposed to, you know, his own investments or something
2 else.

3 Q And Mr. Shkreli's response is: Yet no profits from CHTP.
4 Just short a few things that worked well.

5 What was CHTP?

6 A That was Chelsea.

7 Q During this time period where you were investing in Elea,
8 were you still discussing Chelsea with the Defendant?

9 A I was.

10 Q If you look at the top e-mail, you say in response: I
11 will expect that performance every day. Remember the taxes.

12 What is the reference to the taxes there?

13 A We had been trying to get the taxes for 2006 for a while.
14 So, my accountant was asking me to get the taxes from Elea so
15 he could finish up my taxes, so I was reminding Martin that
16 please, please get me the K-1.

17 Q And in this time period, what had the Defendant told you
18 about the performance of Elea?

19 A I can't remember.

20 Q All right. If you turn to Government Exhibits 100-11 and
21 100-12, do you recognize these two documents?

22 A I do.

23 Q What are these two documents?

24 A They are e-mail exchanges from Martin and myself, and
25 they're in reference to the tax question I had.

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1 MS. SMITH: And your Honor, the Government moves to
2 admit Government Exhibit 100-11 and 100-12.

3 THE COURT: Mr. Agnifilo?

4 MR. AGNIFILO: I'm going to object on relevance
5 grounds. I don't know what the relevance is of the taxes for
6 Elea or is meant to do in this case.

7 THE COURT: I'll sustain the objection.

8 Q Mr. Austin, did you eventually get tax information from
9 the Defendant for Elea Capital?

10 A We eventually got some information, yes.

11 Q What was the quality of the information that you got --

12 MR. AGNIFILO: I'm going to object.

13 Q -- in connection with...

14 MR. AGNIFILO: I object to the relevance.

15 THE COURT: I'll sustain the objection.

16 Ladies and gentlemen, Mr. Shkreli is not being
17 charged with any offenses relating to Elea Capital, so just
18 bear that in mind, please.

19 Q Was there any big event that happened with Elea Capital
20 in 2007?

21 A I think it was 2007 that Elea could not come up with a --
22 I think it was a margin call from Lehman Brothers. And then
23 Lehman Brothers apparently sued Martin and then turned around
24 and sued me.

25 Q Let's unpack that a little bit. When you say that there

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1 was a margin call Elea couldn't make, what do you mean by
2 that?

3 A Meaning the value of the account went down below what it
4 needed to be to support the margin.

5 Q Was that based on a trade or trading?

6 A I think that was -- well, I'm not sure, but I suspect it
7 was based on trading.

8 Q Who was responsible for trading for Elea Capital?

9 A Martin.

10 Q What details did the Defendant provide about the trading
11 that led to the margin call?

12 A No details.

13 Q What was the impact on Elea Capital from that margin
14 call?

15 A I think Elea basically after that just, you know, went
16 bankrupt. I mean, it just disappeared.

17 Q What happened to all of the money that had been in the
18 fund?

19 A I'm not sure what happened with all the money that was in
20 the fund. I lost everything that I put in there.

21 Q And what was the result with respect to Lehman Brothers?

22 Why was Lehman Brothers suing the Defendant?

23 A He was suing -- Lehman Brothers was suing the Defendant,
24 from what I understand, to get their money back, to get the
25 money owed to Lehman Brothers back.

Austin - Direct - Smith

1217

1 Q And how much money was owed to Lehman Brothers by the
2 Defendant?

3 A I think it was in excess of \$2 million, but I'm not sure
4 of the exact amount.

5 Q So as a result of the margin call, Elea Capital went
6 bankrupt; is that correct?

7 A That's basically what I understood.

8 Q And in addition to going bankrupt, the Defendant owed
9 Lehman Brothers \$2 million?

10 A Yes.

11 Q Now I'm going to show you what's been marked as
12 Government Exhibit 100-13, which is Tab 13 in your binder.

13 A Okay.

14 THE COURT: May I just ask a question of this
15 witness?

16 Mr. Austin, you were also sued by Lehman Brothers
17 for this loss; is that correct?

18 THE WITNESS: I was.

19 THE COURT: Were you also sued for \$2 million or
20 were they seeking to recover \$2 million from you as well.

21 THE WITNESS: Yes.

22 THE COURT: And what was the nature of the lawsuit
23 against you as an investor?

24 THE WITNESS: They had come to understand that I
25 would cover any losses that Martin had. That was my

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1 understanding.

2 THE COURT: Did you communicate that you were going
3 to cover Mr. Shkreli's losses to Lehman Brothers?

4 THE WITNESS: No.

5 THE COURT: Was that an accurate understanding on
6 the part of Lehman Brothers, believing you would cover his
7 losses?

8 THE WITNESS: No, I don't believe it was accurate.

9 THE COURT: Thank you.

10 BY MS. SMITH:

11 Q How did Lehman Brothers come to understand -- how did
12 Lehman Brothers come to believe that you would cover
13 Mr. Shkreli's trading loss?

14 MR. AGNIFILO: I object to the form of the question.

15 THE COURT: Sustained.

16 Q Did you ever tell the Defendant you would cover the
17 trading losses for Elea Capital?

18 A No.

19 Q Did the Defendant ever tell you that he told Lehman
20 Brothers that you would cover those losses?

21 A No.

22 Q Do you know how Lehman Brothers came to understand that
23 or did you know how Lehman Brothers came to sue you for those
24 losses?

25 A No.

Austin - Direct - Smith

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1 Q I've shown you what had been marked as Government Exhibit
2 100-13 for identification. Do you recognize this document?

3 A Yeah, I recognize it's an e-mail from Martin to me, dated
4 8/16/07, and it says -- subject line says: Performance.

5 MS. SMITH: Your Honor, the government moves to
6 admit Government Exhibit 100-13 in evidence.

7 MR. AGNIFILO: We have no objection.

8 THE COURT: Received 100-13 without objection.

9 (Government Exhibit 100-13 so marked.)

10 (Exhibit published to the jury.)

11 Q Who was this e-mail from?

12 A It's from Martin Shkreli to me.

13 Q And what's the date of the e-mail?

14 A 8/16/07.

15 Q And what is the subject line?

16 A Performance.

17 Q And can you read the first two sentences?

18 A Markets go up, markets go down, but there are no excuses.
19 I'm embarrassed by my performance but steadfast in my
20 conviction on top ideas.

21 Q And then can you just read the last sentence of that
22 e-mail?

23 A Last sentence...

24 Q It starts: Sorry for all the inconvenience.

25 A Sorry for all the inconvenience I've caused you, dash, I

Austin - Direct - Smith

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1 know sorry doesn't cut it, period.

2 Q What is your understanding of what the Defendant was
3 referring to in this e-mail?

4 A Basically, that I had lost the entire amount that I put
5 into Elea Capital.

6 Q What was your reaction to this e-mail?

7 A I was very upset.

8 Q After Elea Capital went bankrupt, was your relationship
9 with the Defendant the same or was it different?

10 A It was different.

11 Q How was it different?

12 A Well, I had lost around \$4.8 million. I certainly looked
13 at his ideas and his recommendations with a different view.
14 You know, I still thought Martin was an intelligent, smart
15 guy, but I didn't particularly want to do any more business
16 with him.

17 Q I'm going to show you what's been marked as Government
18 Exhibit 100-14 for identification, which is Tab 14 in your
19 binder.

20 A Okay.

21 Q Do you recognize this document?

22 A Yeah, it's an e-mail from Martin Shkreli sent to a number
23 of people, one of which is me. I recognize a few people;
24 Frank Ferrara, few other people. Subject line is: Long idea.

25 MS. SMITH: Your Honor, the government moves to

Austin - Direct - Smith

1221

1 admit Government Exhibit 100-14 in evidence.

2 MR. AGNIFILO: No objection.

3 THE COURT: We will receive 100-14.

4 (Government Exhibit 100-14 so marked.)

5 (Exhibit published to the jury.)

6 Q So, this is an e-mail from Mr. Shkreli to a number of
7 people, including you, on February 11, 2011; is that right?

8 A Yes.

9 Q And one of the recipients on this e-mail, second line
10 from the bottom is Marek Biestek.

11 A Yes.

12 Q And who is Marek Biestek?

13 A Who is Marek? I think Marek -- I met Marek on a couple
14 of occasions. I think Marek worked with Martin.

15 Q And if you look at the signature line for Mr. Shkreli in
16 this e-mail, it says Martin Shkreli, MSMB Capital Management,
17 LP.

18 What was your understanding of MSMB Capital
19 Management?

20 A It was another entity that Martin started.

21 Q What did the Defendant tell you about MSMB Capital?

22 A I can't remember what he told me. I just remember him
23 saying that he was starting another entity and that he had a
24 number of good investors that were going to invest with him.

25 Q Do you remember any of the investors that he mentioned

Austin - Direct - Smith

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1 for MSMB Capital?

2 A I remember the name Ken Banta because it was the same
3 name as a dentist that I had. Hassan, I think.

4 And I know there are other names that I'd probably
5 recognize if I heard the name, but those are the names I
6 recognize sort of off the bat.

7 Q Did the Defendant ask you to become an investor in MSMB
8 Capital?

9 A He did ask me to invest in -- I don't know if he asked me
10 to invest in MSMB Capital, but he did ask me to invest in the
11 company that they bought.

12 Q Staying with MSMB Capital for a minute, did you become an
13 investor in MSMB Capital?

14 A I did not.

15 Q And then let me just show you -- sorry, one other
16 question.

17 You had mentioned an investor named Hassan?

18 A Yes.

19 Q Do you remember that investor's first name?

20 A Maybe Fred.

21 Q I'm going to show you what's already in evidence as
22 Government Exhibit 103-17.

23 (Exhibit published to the jury.)

24 Q This has a lot of BCCs. It's dated December 18, 2012.
25 And can you see in the middle of the screen there that you are

Austin - Direct - Smith

1223

1 one of the people that is BCC'd on this e-mail?

2 A I do.

3 Q What's the subject of this e-mail, which is at the
4 bottom?

5 It's also -- sorry, Mr. Austin, it's also Tab 15 in
6 your binder.

7 A Okay. That's easier for me.

8 Retrophin completes reverse merger. He's talking to
9 me about investing in Retrophin.

10 Q If you turn to the next page, it says: Please see the
11 attached press release. As many of you know, I started a
12 biotechnology company, Retrophin. This is my primary focus
13 going forward and I hope you will support me in this new role.

14 What do you remember the Defendant telling you about
15 Retrophin?

16 A You know, I can't remember too much about Retrophin. He
17 did say that he wanted to make good on the money that I lost
18 and he was going to give me four percent of his holdings in
19 Retrophin. And he did talk a little bit about the board of
20 Retrophin and some of the people that he was thinking about
21 putting on the board. I don't have a lot of memory about it.

22 Q Okay. Did you ever invest in Retrophin?

23 A I did not.

24 Q Did the Defendant ever give you four percent of his
25 shares in Retrophin?

Austin - Direct - Smith

1224

1 A He did not.

2 Q Were you ever on the board of directors for Retrophin?

3 A I was not.

4 Q Did you ever invest in MSMB Capital?

5 A No.

6 Q Why didn't you invest in MSMB Capital or Retrophin?

7 A Well, I had already lost a fair amount of money with
8 Martin and I didn't -- you know, I didn't want to lose any
9 more. Plus, it was -- you know, 2012 was also a very tough
10 time for me financially because some of my other investments
11 were not doing well.

12 Q Did the Defendant ever repay you for the losses that he
13 suffered in connection with Elea Capital?

14 A No.

15 Q What's been the nature of your communications with the
16 Defendant since Elea Capital occurred?

17 A You know, rarely. I haven't talked to Martin -- I don't
18 know when the last time. I probably haven't talked to him for
19 a couple of years.

20 MS. SMITH: One minute, your Honor.

21 THE COURT: Yes.

22 (Pause in proceedings.)

23 MS. SMITH: Your Honor, nothing further.

24 THE COURT: Thank you.

25 Before we begin cross-examination, does anybody need

Austin - Direct - Smith

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1 a break or are Mr. Austin and the jurors doing fine? Is
2 everybody fine?

3 Good. We will proceed with cross-examination.

4 Thank you.

5

6 (Continued on next page.)

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Austin - cross - Agnifilo

1226

1 CROSS-EXAMINATION

2 BY MR. AGNIFILO:

3 Q Good morning, sir.

4 A Good morning.

5 Q My name is Mark Agnifilo. I'm one of Martin Shkreli's
6 lawyers. I'm going to ask you some questions this morning.
7 It won't be too long. If I ask you a question that you find
8 is not clear, ask me to rephrase it and I'm more than happy to
9 do that.

10 You and I have never met; is that right?

11 A We have never met.

12 Q So we're talking for the first time this morning?

13 A For the first time.

14 Q What I would like to start with, if you don't mind, I
15 think the Government put one of these e-mails into evidence
16 and I'm going to try to find it real quick. It's Government's
17 Exhibit 100-13. I don't know what the Government's system is
18 in your tabs there, but it's Government's Exhibit 100-13. And
19 just look up when you find it.

20 MS. SMITH: It's Tab 13.

21 A All right.

22 Q I know you read part of this when you were asked
23 questions on direct examination. I'm going to read the rest
24 of it and you tell me if I have read it correctly. This is
25 essentially Martin Shkreli on August 16, 2007 sending you an

Austin - cross - Agnifilo

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1 e-mail apologizing; fair to say?

2 A Yes.

3 Q Okay. And he says, "Markets go up, markets go down but
4 there are no excuses. I'm embarrassed by my performance but
5 steadfast in my conviction on top ideas. I take advantage of
6 weak prices and all of my favorite names. In modified order,
7 CHTP," that's Chelsea Therapeutic?

8 A Yes.

9 Q "PCOP" that's Pharmacopeia, do you remember?

10 A I don't recall.

11 Q That's fine. "VNDA," that's Vanda?

12 A I don't remember.

13 Q Okay. "ELN. These are well-vetted, long-term
14 investments that I have spent a lot of time and money on and I
15 urge you to get incrementally involved if you have not
16 already. I think the market may go lower taking these stocks
17 with them and I don't know your exposure profile 'too much'
18 when they're going down, not enough when they're going up'
19 makes sense to me, but this stuff except for ELN is
20 Valeant-oriented and unless the market is going to trade them
21 in cash it's worth it. This too will pass. It might be over
22 right now, it might be over in three years, but buying quality
23 assets at a discount is what I like to do. Sorry for all the
24 inconvenience I've cost you. I know sorry doesn't cut it."

25 That's what he said; correct?

Austin - cross - Agnifilo

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1 A That's correct.

2 Q From your conversations with him and from this e-mail,
3 did you get the sense that he was genuinely sorry?

4 A I did.

5 Q And he was expressing his sincere regret that he had
6 failed you?

7 A Yes.

8 Q Okay. Did you find in your time with him that he looked
9 up to you?

10 A I did.

11 Q And that he thought well of you?

12 A Yes.

13 Q He showed you respect?

14 A He did.

15 Q He spoke kindly to you whenever the two of you would
16 speak?

17 A Yes.

18 Q And could you tell from your perspective he wanted you to
19 think well of him; fair to say?

20 A Yes.

21 Q And, so, for him to have to come to you and apologize in
22 this fashion, you found that that was a sincere, genuine
23 apology; correct?

24 A I did.

25 Q Fair to say that he did work hard on your behalf? I

Austin - cross - Agnifilo

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1 understand not a lot of these investments worked out. I
2 suppose some did, I suppose a lot didn't, but over the
3 preceding year or two, he did work hard on your behalf; is
4 that fair to say?

5 A Yes, he worked hard on -- he seemed to work hard on
6 behalf of Elea Capital.

7 Q And the two of you, you said, would communicate by phone
8 on a weekly basis; is that about right?

9 A I think there are probably sometimes more than on a
10 weekly basis, other times less time.

11 Q Okay. And you and he sometimes would see each other in
12 New York; is that right?

13 A Occasionally, yes.

14 Q And you also communicated by e-mail; right?

15 A Yes.

16 Q Would you say that was the most frequent way that you and
17 Mr. Shkreli would communicate, by e-mail?

18 A Yes.

19 Q What I am going to do, I'm going to give you some e-mails
20 and they're just going to sit there in front of you and we're
21 going to talk. If they refresh your recollection, then your
22 recollection will be refreshed. If you don't remember it,
23 then I might ask you some other questions.

24 MS. SMITH: Your Honor, may we have a brief sidebar?

25 THE COURT: Yes. (Continued on next page.)

Sidebar

1230

1 (The following occurred at sidebar.)

2 MS. SMITH: Your Honor, I don't have any objection
3 to them showing these e-mails but there needs to be a
4 question, do you remember X and if he doesn't --

5 MR. AGNIFILO: I didn't do anything yet.

6 MR. BRAFMAN: He's going to leave them on the desk
7 so he doesn't have to walk.

8 MR. AGNIFILO: I'm going to give him what you guys
9 have. I'm going to say that do you remember in April Martin
10 sent you an e-mail and if he says no -- and if you remember on
11 your questioning --

12 MS. SMITH: He doesn't always remember, yes.

13 MR. AGNIFILO: None of this is offered for the
14 truth. This is Martin's work product. This is what Martin
15 was hired to do.

16 MS. SMITH: Is this in connection with Elea? He
17 specifically said he didn't pay him for any of this other
18 stuff.

19 MR. AGNIFILO: It's the whole relationship between
20 the two of them which I think is relevant and if he doesn't
21 remember, I'm going to ask to put the e-mail in evidence.

22 MS. SMITH: If you ask him if he got an e-mail when
23 he first -- it has to be the subject matter.

24 THE COURT: I think you don't put it in that way.
25 If they want it in, you can use it to refresh. You do not

Sidebar

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1 offer it.

2 MR. AGNIFIL0: Not in the first instance. If he
3 recognizes that that's my e-mail and --

4 MS. SMITH: First ask if you had a conversation
5 about phenoxodiol and then refresh his recollection.

6 MR. AGNIFIL0: I'm alerting everybody to the hearsay
7 issue. I don't think you'll have a problem with the
8 foundation. That will be fine. The question is I'm taking
9 the position that none of these are offered for truth. It's
10 not a truthful statement.

11 MS. SMITH: Then why do you want to put them in?
12 It's the truth of the relationship so this is the way the
13 relationship developed.

14 MR. AGNIFIL0: No.

15 MS. KASULIS: Are you saying that Martin's
16 statements --

17 MR. AGNIFIL0: If Martin says I think you should buy
18 phenoxodiol, that's not the truth. He's saying that's an act.
19 That's what he was hired to do.

20 MS. SMITH: He wasn't hired by him.

21 MR. AGNIFIL0: That's a relationship between the
22 investor and Martin.

23 MS. KASULIS: You are offering it for truth. You're
24 saying Martin said that he should buy phenoxodiol --

25 MR. AGNIFIL0: I'm offering it to show that Martin

Sidebar

1232

1 said that he should buy phenoxodiol.

2 THE COURT: That's what the prosecutor just said.

3 MR. AGNIFILo: It's not -- it's not a statement
4 that's able to be truthful. It's not saying I just saw
5 someone rob the deli. That's being offered for the truth if
6 you want to say that somebody robbed the deli. To say buy
7 phenoxodiol, there's no truth or falsity in the statement.

8 It's a statement that's relevant in the fact that it
9 was made. That's not a hearsay objection. I mean -- if we
10 need to do in a larger context, this is important and
11 heartland stuff so if we need to do it in a larger context we
12 need to do it, but I don't think my very experienced
13 colleagues actually understand the rules of hearsay.

14 None of this is offered for the truth. If he would
15 have said I just made \$1 million and I wanted to use that to
16 show he made \$1 million, then I'm offering it for the truth.

17 THE COURT: I think you said earlier that you were
18 offering these e-mails which contain untruths, right?

19 MR. AGNIFILo: No, no. It's not truths or untruths.
20 It's that this is how the relationship progressed. This is
21 how the communications between Martin and Mr. Austin --

22 MS. SMITH: You're alleging --

23 MR. AGNIFILo: Can I finish?

24 MS. SMITH: Sorry.

25 MR. AGNIFILo: This is how their relationship

Sidebar

1233

1 progressed. It progressed through e-mails.

2 THE COURT: I'm going to let the jury have a break.

3 (Sidebar ends.)

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1234

1 (Continuing.)

2 THE COURT: Ladies and gentlemen, why don't we take
3 our mid-morning break now. Put your notebooks face down. Do
4 not talk about the case to anyone or to each other. Please
5 have coffee or whatever you'd like back there and refresh
6 yourself.

7 I will tell Mr. Austin he may also step down and
8 stretch and take a ten-minute break, if you would like, sir.
9 You may step down, thank you.

10 (Jury exits.)

11 (Witness leaves the stand.)

12 MR. BRAFMAN: May we have a five-minute break to
13 talk among ourselves, me and Mr. Agnifilo? We'll step out for
14 two minutes and come back from the jury gets back.

15 THE COURT: I would like to resolve this. Is it
16 about this issue?

17 MR. BRAFMAN: Yes.

18 (Recess taken.)

19 (In open court, outside the presence of the jury.)

20 THE COURT: Go ahead, Mr. Agnifilo.

21 MR. AGNIFILO: So under Rule 801(c)(2), none of what
22 I intend to offer is offered for proof of the truth of the
23 matter asserted in the statement.

24 The distinction I think that's important is if there
25 would be an out-of-court statement that seeks to prove the

1235

1 truth of something asserted in the statement, I just saw
2 someone commit a fraud, I just saw someone is run a red light,
3 I just saw someone rob a bank, that's hearsay.

4 The reason it's hearsay is because you can't
5 cross-examine the declarant on the basis of their knowledge.
6 None of this is hearsay because, for instance, to be more
7 specific, the first e-mail that I am seeking to ask Mr. Austin
8 about, on April 13, 2005, Mr. Shkreli sends Mr. Austin an
9 e-mail concerning a stock called Novogen that I believe
10 Mr. Austin is an investor in.

11 And Mr. Shkreli sends a piece of research having to
12 do with a drug called phenoxodiol and there's a study going on
13 concerning this drug that Mr. Shkreli wants Mr. Austin to know
14 about. Mr. Austin significantly then forwards Mr. Shkreli's
15 e-mail to his trader, Frank Ferrara, so that Frank Ferrara,
16 his trader, can trade or not trade on the information that
17 Mr. Shkreli just provided.

18 There's no way of bringing out that reality and that
19 critical chain of information that Mr. Shkreli gave actionable
20 information to Mr. Austin. Mr. Austin forwarded the e-mail to
21 Frank Ferrara so that Frank Ferrara, his trader, could trade
22 or not trade on it, and none of this is offered for the truth.

23 MS. SMITH: Your Honor --

24 THE COURT: The way to get to that, sir, is to ask
25 the witness whether he recalls getting a recommendation from

1236

1 Mr. Shkreli regarding X drug. If he doesn't recall, you can
2 show him the document. It doesn't get admitted under Rule
3 612. You can then ask him whether he then gave directions to
4 his broker based on that information.

5 But I think that when there is a statement that is
6 being offered, like the one that you are suggesting is being
7 offered for the truth, the truth of the matter being that
8 Mr. Shkreli recommended a particular drug or purchase to
9 Mr. Austin.

10 So, for example, if somebody writes a note to a
11 roommate saying go buy milk, that's going to come in for the
12 truth that somebody directed someone to buy milk.

13 MR. AGNIFILO: It's the truth of -- they added words
14 and the words that they added are important, "Prove the truth
15 of the matter asserted in" -- not the truth of the statement,
16 the truth of the matter asserted in the statement. You have a
17 statement --

18 THE COURT: Right. So the matter asserted in the
19 statement you are proffering is Mr. Shkreli telling Mr. Austin
20 you should buy this, right?

21 The truth of the matter is that Mr. Shkreli's
22 telling Mr. Austin I recommend that you buy this. But I think
23 that the way you can get this in as I said is you can refresh
24 the recollection, but the document itself is not coming in.

25 MR. AGNIFILO: I am -- I'm going to start by trying

1237

1 to refresh his recollection. Your Honor -- I honestly, and I
2 don't speak in strong terms all the time, I think this is
3 wrong. This is just -- and I will tell you why.

4 Because if he would have said I want you to buy
5 this, I was just at a certain place and I did a certain thing
6 and I saw a certain thing, then you might be right. You might
7 be right because then if the relevance -- also it's an
8 exception to hearsay if it's relevant on its effect on the
9 listener. Then it's no longer being offered for the truth.

10 So here is what I will do: We're going to get to
11 the hearsay issue eventually because I think what Mr. Austin
12 is going to say is I recognize that as my e-mail. I don't
13 remember that I got this recommendation twelve years ago from
14 Martin Shkreli and I don't remember that I forwarded it on to
15 is Frank Ferrara.

16 That's critical. It's not critical for any hearsay
17 reasons. It's critical because it shows Josiah Austin is
18 listening to Martin Shkreli's recommendations and sending them
19 to Frank Ferrara. They wanted to call this witness. They
20 wanted to get into all of this background stuff and now we
21 have to get into the background stuff.

22 They brought it out on direct examination; what are
23 the different ways you communicated? We communicated by
24 phone, we communicated in person, we communicated by e-mail.
25 They communicated by e-mail.

1238

1 These are the e-mails that they're referring to in
2 their direct examination.

3 MR. AGNIFILO: Those e-mails referred to
4 Mr. Austin's communications with Mr. Shkreli about his
5 investment in Elea. But Elea didn't fall out of the sky.
6 There's background. He didn't just meet him with Elea.
7 There's background. They don't get to pick and choose where
8 the case starts?

9 MS. SMITH: Your Honor --

10 MR. AGNIFILO: I just --

11 THE COURT: You need to calm down.

12 MR. AGNIFILO: But, Judge, it's important.

13 THE COURT: I understand.

14 MR. AGNIFILO: It's important because they're trying
15 to keep out the important part of the story. And I can't let
16 that happen. This man has a track record with Martin Shkreli.
17 A lot of it is very positive. He thinks he's a hard worker
18 and dedicated and smart. I have a right to show why he thinks
19 Martin Shkreli is smart.

20 Do you know why he thinks he's smart? He thinks
21 he's smart because he talks about these day in and day out.
22 Shkreli is sending him studies and talking to doctors and
23 telling him about the science. That's why he thinks he's
24 smart.

25 He thinks he's smart because of all the hard work

1239

1 that Shkreli does. Your Honor is not saying that none of that
2 can be asked, but it's in e-mails.

3 It's e-mailed. For the most part it's e-mails.
4 Shkreli says here is a study that was in the New England
5 Journal of Medicine. This could be important for Novogen.
6 Here is a study that was in Lancet. This could be important
7 for viral pharma. That is the nature of the relationship and
8 we run the risk of gutting the entire reason that this witness
9 got on the witness stand and despite losing his money is
10 saying I still think that Martin is smart; I think that Martin
11 made some mistakes, but I think he was smart and I stayed with
12 him because of all of the good information he gave me through
13 the years.

14 That is what they brought out and for me to not go
15 into that in full is just not fair. I apologize that -- yes,
16 I'm going to calm down but it's important because I can't let
17 the relationship be taken out of context.

18 They brought him here from Arizona. He's not even
19 part of the indictment. They brought him here so that they
20 could show that he did bad things with Elea also, but I have
21 to show the entire nature of the relationship. He's here. He
22 said things on direct. I have to be able to explore them and
23 the fact is that he has reached these opinions because of
24 e-mails that he got --

25 MS. SMITH: Your Honor --

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1 MR. AGNIFILO: -- among other things.

2 MS. SMITH: Your Honor, just to make clear, the
3 defendant in multiple places claimed to investors that MSMB
4 Capital's AUM was a certain amount in part because he was
5 managing Josiah Austin's money. It's very clear why it's
6 relevant along with Elea Capital.

7 I think Mr. Agnifilo fundamentally misunderstands
8 our objection. The objection is not can I ask the
9 defendant -- can I ask the witness what is the nature of the
10 relationship; did he recommend particular drugs, did you
11 forward that information to your financial advisor, did you
12 take it seriously, did you buy stock based on the
13 recommendation. These are all totally legitimate questions.

14 He cannot, however, put in 94 e-mails that are
15 hearsay without an objection -- without a specific exception
16 for a particular e-mail. They are out-of-court statements and
17 they are being offered for their truth. They're being offered
18 for the truth of exactly what Your Honor pointed out; I
19 recommended this stock and then I took or didn't take this
20 recommendation.

21 We're not trying to limit what the defendant wants
22 to do here at all. He just needs to do it in the proper way.

23 MR. AGNIFILO: We are not quoting the hearsay rule
24 accurately. It's proof -- "prove the truth of the matter
25 asserted in the statement," the matter asserted in the

1241

1 statement. There's a statement and there's a matter asserted
2 in the statement.

3 THE COURT: The matter asserted in the statement is
4 a recommendation that he buy a certain stock. So --

5 MR. AGNIFIL0: I humbly --

6 THE COURT: What is the matter?

7 MR. AGNIFIL0: There is no matter. That's why it's
8 not hearsay.

9 THE COURT: There would be no hearsay rule if we
10 took your argument to the logical strength. Sir, I
11 respectfully disagree with your interpretation.

12 MR. AGNIFIL0: That's not what hearsay is for.

13 Hearsay is to say I just saw something happen. That's the
14 matter in the statement and since that can't be cross examined
15 because the declarant is not in open court to ask questions.
16 We don't think that's reliable so through the years that's
17 been kept out as hearsay.

18 The simple statement I think -- I think you look
19 nice today. That's not a hearsay statement.

20 MS. SMITH: If it's offered for truth it would be
21 hearsay.

22 MR. AGNIFIL0: If I want to show that you're
23 thankful and you say "thank you" then it's offered for the
24 effect on the listener. The other thing, Judge, they say that
25 Josiah Austin is here to show that Martin Shkreli in good

1242

1 faith could not have thought he had his money under
2 management. I have no problem if Mr. Austin recalls the
3 issues that are in the e-mails. I don't need to go right into
4 the e-mails, but if he says, I get so many e-mails, I
5 recognize this e-mail but I don't remember anything of what's
6 in it then for me to not be able to get into the e-mails-

7 THE COURT: Sir, sir, there's a difference between
8 what you can get into on cross through your cross-examination
9 and what you can put into evidence via documents. All right,
10 I'm not precluding it and I think the Government is not
11 arguing against your exploring on cross whether Mr. Shkreli
12 offered investment advice to Mr. Austin who from time to time
13 followed that advice, okay.

14 Nobody is tying your hands on that. That is proper
15 cross. You can explore whether or not Mr. Shkreli did or did
16 not provide -- was or was not given authority to manage
17 Mr. Austin's investments. All of that paragraph for cross but
18 to throw documents into the record that are hearsay without a
19 proper route for admission, it's not going to be appropriate.
20 I'm sorry. The documents can't come in.

21 (Continued on next page.)

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1243

1 MR. AGNIFILO: I agree with your statement of law.
2 My contention is they're not hearsay. Here's what I will do:
3 I will give Mr. Austin the documents. I will ask if they
4 refresh his recollection as to the events in the documents.

5 THE COURT: Well, you have to ask the question, did
6 there come a time sometime in March of 2007 when Mr. Shkreli
7 e-mailed you about a recommendation he had for a particular
8 drug. I don't remember. Please look at Government exhibit or
9 defense exhibit whatever, does that refresh your recollection,
10 yes, it does.

11 MR. AGNIFILO: I agree.

12 THE COURT: Do you recall now that he did, in fact,
13 recommend that you purchase a certain drug on whatever date it
14 was. That you can do.

15 MR. AGNIFILO: I agree.

16 THE COURT: All right. But you can't evade the
17 hearsay rule by proffering a document. If you will look at
18 Rule 612, only the opposing party can admit a document that is
19 used to refresh a recollection.

20 MR. AGNIFILO: But it could have an independent
21 basis. It is not -- I'm looking for it -- my contention is
22 not hearsay.

23 THE COURT: You don't have an independent basis to
24 admit it. It is hearsay. You are offering it for the truth,
25 that is that Mr. Shkreli recommended a certain drug to Mr.

Austin - cross - Agnifilo

1244

1 Austin.

2 MR. AGNIFILO: My objection is noted obviously.

3 THE COURT: All right.

4 MR. AGNIFILO: Thank you.

5 THE COURT: You can ask whatever questions you'd
6 like. The limitation is the admission of the document in
7 evidence. It is hearsay. I'm sorry, sir.

8 MR. AGNIFILO: No. Thank you.

9 THE COURT: We will bring the jury back in.

10 By the way, what are the numbers of the exhibits
11 that you have been referring to?

12 MR. AGNIFILO: Defense 1001 through 1094.

13 THE COURT: Thank you.

14 (Jury enters the courtroom.)

15 THE COURT: All of our jurors are back. Please be
16 seated, everybody.

17 Sir, you may resume your cross-examination of Mr.
18 Austin.

19 CROSS EXAMINATION

20 BY MR. AGNIFILO: (Continuing)

21 Q Good morning, Mr. Austin. I want to ask some more
22 questions of you, if it's all right. Do you recall from time
23 to time, would Martin Shkreli send you research or things from
24 medical literature concerning drugs that some -- of companies
25 that you had investments in?

Austin - cross - Agnifilo

1245

1 A Yes.

2 Q Okay. And do you recall a drug called Phenoxodiol?

3 A Yes.

4 Q And do you recall what company made Phenoxodiol?

5 A I don't.

6 Q And do you recall Phenoxodiol because you had an interest
7 in that drug because one of the companies you had invested in
8 was developing that drug?

9 A I'm assuming so, but I don't have a recollection.

10 Q Okay. Did you have an investment at one point in a
11 company called Novogen?

12 A Yes.

13 Q Do you recall when you got into Novogen as an investor?

14 A I think it was somewhere around 2000.

15 Q You were an investor in Novogen in 2005, fair to say?

16 A I was.

17 Q And do you recall if Martin Shkreli, in April of 2005,
18 sent you some research concerning Phenoxodiol made by the
19 Novogen Company? I know I am asking a very specific question.

20 A I can't recall.

21 MR. AGNIFIL0: Your Honor, can I show the witness
22 something?

23 THE COURT: Yes, you may.

24 MR. AGNIFIL0: I have Defense Exhibit 1001 for
25 identification. May I approach?

Austin - cross - Agnifilo

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1 THE COURT: Of course you can.

2 Q I am handing you an e-mail. Read it to yourself. Don't
3 read it out loud. Look up at me when you have had a chance to
4 look at it.

5 Do you recall that Phenoxodiol was going to be the
6 subject of a study being done at Yale University?

7 A I don't recall.

8 Q And fair to say you got some information from Mr. Shkreli
9 about Phenoxodiol; correct?

10 A That's what this e-mail says.

11 Q Right. And you got it in the form of an e-mail?

12 A Yes.

13 Q And who's Frank Ferrara?

14 A Frank Ferrara is a stockbroker that worked for Janney
15 Montgomery that I did a lot of business with.

16 Q Do you recall from time to time that Mr. Shkreli would
17 give you a stock recommendation and you would forward that
18 information on to Frank Ferrara?

19 A I would.

20 Q Okay. And do you recall doing that specifically with
21 this information concerning Phenoxodiol?

22 A I don't recall that.

23 Q Could I ask you, sir, do you recognize this as your
24 e-mail?

25 MS. SMITH: Objection, Your Honor.

Austin - cross - Agnifilo

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1 MR. AGNIFILO: I'm just asking the question.

2 THE COURT: Overruled. Is this an e-mail that you
3 recognize?

4 THE WITNESS: I recognize my name. I don't
5 recognize this e-mail, but I'm assuming it came from me.

6 Q Now, did you and Mr. Shkreli discuss your investment in
7 Novogen around this time, 2005?

8 A I can't recall. I'm sure we discussed it, but I can't
9 recall discussing it.

10 Q All right. Do you recall if you also had an investment
11 in a company called Repligen? I might be saying it wrong.

12 A What was the question?

13 Q Did you have an investment in a biotech company called
14 Repligen?

15 A I might have. I don't recall.

16 Q Okay. Do you recall if Mr. Shkreli ever sent you
17 information concerning Repligen in April of 2005?

18 A I don't recall.

19 Q I understand.

20 MR. AGNIFILO: If I could, I'm going to show Mr.
21 Austin Defense Exhibit 1002.

22 What I will do is hand you this and take the other
23 one.

24 THE WITNESS: Thank you, sir.

25 MS. SMITH: Your Honor, can we have a time frame on

Austin - cross - Agnifilo

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1 this as well?

2 THE COURT: He said April 2005.

3 MR. AGNIFILO: Yes, April 2005. April 24, 2005.

4 Q And I know it is 12 years ago and I apologize for asking
5 such a detailed question. Does reading that refresh your
6 recollection as to any of this?

7 A No, it doesn't.

8 Q All right. I understand. Fair to say that you thought
9 Martin Shkreli was smart, you said that in direct examination;
10 correct?

11 A I do.

12 Q And it is fair to say that he, from time to time, would
13 send you medical research; correct?

14 A Yes.

15 Q And he would send you papers from medical journals, fair
16 to say?

17 A Yes.

18 Q And he would communicate with you and talk about and tell
19 you about different sort of scientific processes that caused
20 these drugs to work from time to time; correct?

21 A From time to time, yes.

22 Q And sometimes you would send him reports for him to look
23 at; correct?

24 A Correct.

25 Q Okay. And you did that with some frequency, is that fair

Austin - cross - Agnifilo

1249

1 to say?

2 A Yes, I did that with a number of people with fair
3 frequency.

4 Q Now, in 2005, did you have an investment in BioPharma?

5 A I'm not sure if it was -- I had an investment in
6 BioPharma. I don't know if it was 2005.

7 Q And would Mr. Shkreli stay abreast of the progress of
8 some of the stocks that you were invested in, including
9 BioPharma?

10 A Yes.

11 Q Okay. And do you recall if he, in August of 2005,
12 specifically August 16, 2005, if he gave you a rundown on the
13 performance of BioPharma stock on that day?

14 If you knew, you would have a wonderful memory.

15 A I have no idea.

16 Q So here's what I am going to do, if you don't mind, I'm
17 going to show you Defense Exhibit 1005 and my only question to
18 you, sir, is whether it refreshes your recollection.

19 Thank you. I will take the other one.

20 A It does not refresh my memory.

21 Q That's fine. You can just put it down. Thank you, sir.

22 Now, you said that you had established a very large
23 position in Chelsea Therapeutics; correct?

24 A I did.

25 Q I think you said on direct examination that Mr. Shkreli

Austin - cross - Agnifilo

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1 really introduced you to that particular company?

2 A He did.

3 Q I understand there were others who would talk about
4 Chelsea as well; is that right?

5 A Yes.

6 Q But Martin really pressed Chelsea on you, is it fair to
7 say?

8 A He did.

9 Q And Martin told you he thought Chelsea was a very good
10 company?

11 A He did.

12 Q Now, do you recall you and Martin going to the Chelsea
13 offices in Charlotte, North Carolina?

14 A We did.

15 Q Okay. And do you recall about when that might have been?

16 A I don't.

17 Q I am going to throw it out, do you think it could have
18 been June 2006? Does that sound about right?

19 A It could have been any time.

20 Q Okay. Do you recall what led to the trip with you and
21 Mr. Shkreli going to the offices of Chelsea Therapeutics in
22 North Carolina?

23 A I don't.

24 Q And do you remember picking him up at the airport?

25 A I don't. I don't think I picked him up at the airport.

Austin - cross - Agnifilo

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1 I think he met me at the offices, but I'm not sure.

2 Q And when you went to the offices, do you recall who you
3 met with?

4 A Simon Pedder, who was president, and some of the other
5 senior people.

6 Q And it was you and Mr. Shkreli together?

7 A It was.

8 Q And Mr. Shkreli, by this point, had spoken to you pretty
9 extensively about Chelsea Therapeutics?

10 A Yes.

11 Q At this point, Mr. Shkreli had even spoken with different
12 doctors who were involved in the testing of various of
13 Chelsea's drugs; correct?

14 A That was my understanding.

15 Q And you knew that Mr. Shkreli was going and speaking to
16 these doctors about Chelsea; true?

17 A What was the question?

18 Q Did you know -- did you know at the time that Mr. Shkreli
19 was going to speak to these doctors about Chelsea?

20 A I did not.

21 Q Do you recall having communications with him about that?

22 A I could have, but I just don't remember.

23 Q Just give me one second, sir.

24 Do you remember at one point -- before we get to
25 that, let's talk about the Chelsea trip for a second. You say

Austin - cross - Agnifilo

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1 you don't remember -- you don't remember that you picked him
2 up at the airport; correct?

3 A I don't. I could have. I don't remember.

4 Q I understand. I am going to show you Defendant's Exhibit
5 1046. It is an e-mail from 6/25/07. On the top is an e-mail
6 from you to Martin. Just read it to yourself.

7 Does it refresh your recollection that you picked
8 him up at the airport?

9 A No, I still think that I met him at the office.

10 Q Do you remember making arrangements to pick him up at the
11 airport?

12 A I don't.

13 Q Do you remember having any e-mail correspondence with Mr.
14 Shkreli about picking him up at the airport?

15 A I don't.

16 Q And this doesn't refresh your recollection?

17 A It doesn't.

18 Q Okay. Thank you, sir. I'm going to take it from you.

19 Now, do you recall that very often you and Mr.
20 Shkreli would talk about Mr. Shkreli having conversations with
21 Simon Pedder from Chelsea?

22 A I remember talking with Martin about him talking to
23 Simon.

24 Q So Martin was speaking to Simon Pedder at Chelsea about
25 the performance of the company?

Austin - cross - Agnifilo

1253

1 A I'm assuming so, yes.

2 Q And Martin would come back to you and report to you quite
3 frequently about the nature of the conversation with Mr.
4 Pedder, is that fair to say?

5 A Fair to say.

6 Q I think you said earlier when you were speaking -- in
7 your estimation, Martin Shkreli worked very hard on on your
8 accountant; correct?

9 A I think Martin worked hard.

10 Q Do you remember asking him to do anything where he said
11 no to you?

12 A I can't recall.

13 Q Okay. Did you ever say Martin, I want you to read this
14 medical report, and he said Mr. Austin, I would love to, I'm
15 just too busy, he never said that; right?

16 A I can't recall.

17 Q And you can't recall that ever happened?

18 A No.

19 Q But you can recall that he would give you pretty detailed
20 analyses of these medical reports that he gave you from time
21 to time; correct?

22 A He would.

23 Q Do you remember at one point you had asked Martin who the
24 different shareholders were of Chelsea Therapeutics other than
25 yourself?

Austin - cross - Agnifilo

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1 A I don't remember asking him. I know I asked a few people
2 and also looked into it myself. I wouldn't be a bit surprised
3 if I had asked him.

4 Q If you did?

5 A I would not be surprised if I had asked him.

6 Q And do you remember him telling you the answer?

7 A I don't remember that, no.

8 Q Do you know who Lindsay Rosenwald is?

9 A Yes.

10 Q Who is Lindsay Rosenwald?

11 A Lindsay Rosenwald is a biotech investor that Martin knew
12 and that I met, who was an investor in Chelsea.

13 Q All right. And do you remember Martin telling you that
14 Lindsay was one of the major investors in Chelsea?

15 A I assume he told me. I can't remember.

16 Q What I am going to do is show you Defense Exhibit 1035.
17 I'm trying to make it easier. I have highlighted certain
18 parts. Take a look at it, sir.

19 Do you remember if one of the names he gave you was
20 Lindsay Rosenwald as being one of the major Chelsea investors?

21 A What was the question?

22 Q Did Martin tell you at some point that Lindsay Rosenwald
23 had a big stake in Chelsea?

24 A That's what this says here.

25 Q Do you remember -- other than what the document says; the

Austin - cross - Agnifilo

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1 e-mail says, do you have an independent recollection of Martin
2 telling you that?

3 A I have a vague recollection of Martin -- because Martin
4 knew Lindsay, and, so, I have a vague recollection. I don't
5 have a specific recollection.

6 Q Fair enough. Fair enough. I am going to take the
7 exhibits from you. Thank you, sir.

8 Now, when Martin first told you about Chelsea, did
9 you have any position at Chelsea at that time?

10 A I don't think so.

11 Q So the entirety of your position in Chelsea came after
12 Martin first introduced you to the stock?

13 A I think so, yes.

14 Q And you said at one point you were a 10 percent
15 shareholder?

16 A I was over 10 percent shareholder.

17 Q Over 10 percent. As you sit here, do you remember at its
18 high point how many shares of Chelsea you had?

19 A I don't.

20 Q At its high point, do you remember what the value of your
21 shares in Chelsea was?

22 A I don't know the exact number, but I think it was
23 somewhere around \$30 million.

24 Q So let's talk about how you amassed your position in
25 Chelsea. From time to time Martin would give you updates on

Austin - cross - Agnifilo

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1 the performance of the stock; correct?

2 A Yes.

3 Q And you already said that you went with Martin to North
4 Carolina to the Chelsea offices; correct?

5 A I did once. I went to the office a number of times and
6 one of the times I went with Martin.

7 Q Was there any particular reason that you brought Martin
8 along with you at the time that you did?

9 A He asked to come.

10 Q Okay. And let me -- give me one second. Do you remember
11 including him on an e-mail chain with Katheryn McNeal? Do you
12 remember who that is?

13 A Yes, Katheryn McNeal was a public relations person.

14 Q And do you recall you and Ms. McNeal were talking about
15 your visit to Chelsea? This is --

16 A I can't remember.

17 Q I understand. And I think Ms. McNeal might have said to
18 you she was in San Francisco so you had to do the visit on a
19 Monday.

20 I'm sorry. I know. I know what I am doing, I'm
21 sorry for all of the detail.

22 Do you remember?

23 A No.

24 Q Do you remember at one point that you included Martin on
25 the e-mail chain so that Martin and you could make plans to go

Austin - cross - Agnifilo

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1 to Chelsea the following Monday?

2 A I don't remember.

3 Q So you and Martin go to Chelsea and you meet with Simon
4 Pedder, he's the CEO of Chelsea?

5 A Yes.

6 Q You meet with Katheryn McNeal, she is the chief of
7 investor relations of Chelsea; correct?

8 A I'm assuming. I don't know. I can't remember.

9 Q And you met with other executives of Chelsea; right?

10 A Yes.

11 Q And you and Martin were together the whole day?

12 A Yes.

13 Q Did you tell anybody at Chelsea what your connection to
14 Martin was?

15 A I don't recall.

16 Q Fair to say that Martin would be pretty active in terms
17 of the conversation with these folks at Chelsea; true?

18 A True.

19 Q Fair to say, from your perspective, Martin seemed
20 somewhat honored to be in your presence at Chelsea from what
21 you could see?

22 A Yes.

23 Q He wanted to show you that he knew what he was talking
24 about from your perspective?

25 MS. KASULIS: Objection to what the defendant

Austin - cross - Agnifilo

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1 wanted.

2 THE COURT: Sustained.

3 Q In your presence, Martin would speak about the science
4 behind some of the Chelsea drugs with the Chelsea executives;
5 correct?

6 A Correct.

7 Q And it seemed, from your perspective, he knew the science
8 very well; correct?

9 A Yes.

10 Q And fair to say that's part of his role at this meeting,
11 Right? He really does know the science; correct?

12 A I can't answer that.

13 Q That's fine. At the time you are a major investor in
14 Chelsea; right?

15 A Correct.

16 Q So you are obviously providing tremendous financial
17 support as an investor of the company; correct?

18 A Correct.

19 Q And Martin went there with you that day and had
20 discussions about medicine and science with the different
21 Chelsea executives; right?

22 A I can't remember what we discussed that day.

23 Q Do you remember being down there in the offices the
24 better part of the whole day at that time?

25 A I remember flying, yes. We were down there the better

Austin - cross - Agnifilo

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1 part of the day.

2 Q Now, in addition to going down to the Chelsea offices,
3 Martin helped you assemble your position in Chelsea, is it
4 fair to say?

5 A Martin helped to a degree. I would say most of the stock
6 I got outside of Martin.

7 Q But Martin did help you assemble that position?

8 A Martin was one of the people that helped me with that
9 position.

10 Q Okay. Would Martin tell you from time to time that there
11 were blocks of Chelsea stock available? Do you remember that?

12 A Yes. I had a number of people that were looking for the
13 stock. It was -- Martin was one of the many.

14 Q Right. And Martin would communicate with you from time
15 to time that he located a block of Chelsea stock that you
16 could buy if you found the price attractive; correct?

17 A Correct.

18 Q And he came to you on several different occasions and
19 said hey, I found someone who's willing to sell you a block of
20 Chelsea stock at X price; right?

21 A Correct.

22 Q More than five or six? I mean, he came to you many, many
23 times and said I located a block of Chelsea stock for you?

24 A Yes, I had a number of people that would come to me very,
25 very often because it was known that I was out there looking

Austin - cross - Agnifilo

1260

1 for Chelsea.

2 Q I understand Martin is not the only one helping you
3 assemble your position in Chelsea, but I am only asking about
4 his involvement at this point.

5 A Uh-hum.

6 Q You have to say yes or no so she can write it down.

7 So he would come to you with blocks of Chelsea stock
8 and you would either buy them or not buy them based on the
9 individual pricing?

10 A Correct.

11 (Continued on following page.)

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Austin - Cross - Agnifilo

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1 (Continuing)

2 BY MR. AGNIFILIO:

3 Q And there were times when you asked Martin to see if
4 there was any flexibility in the price, correct?

5 A Correct.

6 Q Because the offerer, whoever it was, wanted a certain
7 price. You didn't want it at that price, and, so, you would
8 say to Martin: If you could do better, I might be interested
9 in the block of Chelsea.

10 Correct?

11 A Correct.

12 Q And just so the jury understands and the judge and all of
13 us, how does -- it's not easy, fair to say, to assemble a
14 large position in a company like Chelsea?

15 A Correct.

16 Q It takes a great deal of time, correct?

17 A It takes time, yes.

18 Q And it takes effort.

19 A Yes.

20 Q And you have to diligently go out and locate blocks of
21 Chelsea stock to assemble your position, right?

22 A Yes.

23 Q And that's why you said just a little while ago you had
24 many different people going out trying to help you assemble
25 your Chelsea position, correct?

Austin - Cross - Agnifilo

1262

1 A Yes.

2 Q Which at one point was \$30 million.

3 A I think at one point it was that high.

4 Q And Martin was one of the people helping with assembling
5 your position.

6 A Martin was one of the people.

7 Q Did you ever bring anybody else to the Chelsea office in
8 North Carolina, other than Martin?

9 A Yes.

10 Q Who else did you bring?

11 A Bill Rickert. I can't think of any others. I
12 probably...

13 And then I went down there myself a number of time.

14 Q And Bill Rickert was someone else who was giving you
15 investment advice from time to time?

16 A Yes.

17 Q Do you recall Martin and Bill Rickert speaking with each
18 other?

19 A I don't recall them speaking together; I think they did
20 speak together.

21 Q Okay. And do you recall if they were on common e-mail
22 chains? Only if you recall.

23 A I can't recall.

24 Q But it wouldn't surprise you if they were?

25 A It would not surprise me.

Austin - Cross - Agnifilo

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1 Q Because, essentially, Martin was doing something similar
2 to what Bill Rickert was doing, which was helping you assemble
3 your position in Chelsea.

4 A Yes.

5 Q And do you know offhand how often Martin would speak to
6 Simon Pedder, the CEO of Chelsea?

7 A I don't.

8 Q It's more than a handful of times, though; fair to say?

9 A It was a number of times because I remember that Simon at
10 one point asked me to please have Martin stop calling him.

11 Q So it was probably maybe two handfuls or three handfuls
12 of times.

13 A Yes.

14 Q Martin can be kind of persistent, right?

15 A To say the least.

16 Q Okay. Fair enough.

17 Persistent almost to the point of maybe even being
18 annoying from time to time?

19 A Yes.

20 Q But you thought it all -- and correct me if I'm wrong --
21 you always thought at all times when Martin was dealing with
22 Chelsea, he was dealing with your best interest at heart.

23 A Yes.

24 Q So you didn't mind -- maybe Mr. Pedder minded, but you
25 didn't mind that Martin was talking to Chelsea with your best

Austin - Cross - Agnifilo

1264

1 interest at heart.

2 A No. I thought it was both my best interest and Elea's
3 best interest.

4 Q Right, right. So, your interests aligned to a certain
5 extent.

6 A Yes.

7 Q But you knew that part of what -- that Martin would have
8 these conversations with Simon Pedder and then come back to
9 you and tell you exactly how it went, right?

10 A Actually, I don't know that. I'm assuming yes, but I'm
11 sure there are times he talked to Simon that I didn't know
12 about.

13 Q Okay. All right. And when he reported back to you, on
14 those occasions when he reported back to you after speaking to
15 Simon, he gave you a fair full debriefing about their
16 conversation; fair to say?

17 A I'm assuming he did.

18 Q You mentioned a few minutes ago Bill Rickert. Does
19 Mr. Rickert have a medical degree, do you know?

20 A Excuse me?

21 Q Does he have a medical degree?

22 A He does not.

23 Q And who is he? I don't mean everything, but what's his
24 role in your life?

25 A Bill Rickert is a very good friend of mine. We have been

Austin - Cross - Agnifilo

1265

1 doing business together for many years. And he was also a
2 director of Chelsea.

3 Q So, he was a director of Chelsea as well.

4 A Yes, he was.

5 Q Do you remember in 2007 Martin having a correspondence
6 with Simon Pedder, Kathryn McNeil, and you in regard to a drug
7 that was a competitive drug of one of Chelsea's drugs?

8 I know it's a very detailed question. Do you
9 remember?

10 A I don't.

11 Q I'm going to show you Defense Exhibit 1038.

12 Chelsea had a drug called droxidopa?

13 A It does.

14 Q Do you recall, as you're sitting here today, what
15 droxidopa did? And if you don't, that's okay.

16 A I don't.

17 Q That's fine. So, I want to show you Exhibit 1038. It's
18 an e-mail from Martin on 6/8/07 to you and the other two
19 executives at Chelsea.

20 Do you recall if from time to time, including on
21 this occasion, that Martin would give you sort of updates of
22 how the competition was doing?

23 A Yes.

24 Q Thank you, sir. I'm just going to take that from you.

25 Because that's an important thing to know; fair to

Austin - Cross - Agnifilo

1266

1 say, right?

2 A Yes.

3 Q Because the success of the company is going to be based
4 in part on the internal quality of the company, right?

5 A Yes.

6 Q But it's also going to be based on the quality of its
7 competitors, right?

8 A Correct.

9 Q One of the things Martin would do is research the entire
10 field to try to see where the competition was and what the
11 competition was doing, correct?

12 A Yes. Most of the analysts would do that also.

13 Q I'm not saying he's the only one doing it, but that's one
14 of the things he would do?

15 A Yes.

16 Q And he would give this information to you and Simon
17 Pedder and Kathryn McNeil, correct?

18 A Yes.

19 Q Now, do you recall through the years getting very
20 lengthy, detailed e-mail communications from Martin about
21 different drugs and the science behind different drugs?

22 A I do. I remember -- I mean, I recall getting very
23 technical, lengthy e-mails.

24 Q And this would happen with some degree of frequency,
25 correct?

Austin - Cross - Agnifilo

1267

1 A It would happen occasionally.

2 Q You'd go to your computer, you open it up, and here's a
3 thousand words from Martin Shkreli using terms that unless
4 you're a scientist you might not know, correct?

5 A I don't think they'd be a thousand words. They'd often
6 be publications, you know, a copy of a publication that he
7 read.

8 Q Right. Sometimes he sent you his own thoughts, correct?

9 A Yes.

10 Q And his own thoughts would be fairly detailed and fairly
11 lengthy and fairly informative, correct?

12 A Sometimes.

13 Q Now, not all of these drugs were home runs, correct?

14 A In terms of?

15 Q I mean he would tell you I think this is a good drug
16 correct?

17 A Correct.

18 Q And he would tell you I think it's a good drug because it
19 attacks this medical issue in this specific way, which is
20 better than all the other drugs attack the medical issue, in
21 sum and substance, correct?

22 A Correct.

23 Q And sometimes the companies that made those drugs went
24 up, right?

25 A Occasionally.

Austin - Cross - Agnifilo

1268

1 Q And sometimes they went down?

2 A Yes.

3 Q Or like Chelsea, didn't go up as much as Martin had told
4 you it would, right?

5 A Correct.

6 Q Let's talk about Chelsea for a second. Martin, fair to
7 say, was sending you a great deal of literature on Chelsea in
8 your early days after he introduced it to you, correct?

9 A Correct.

10 Q And he really wanted you to buy Chelsea.

11 A He did.

12 Q And he was giving you all these reasons -- medical
13 reasons scientific reasons -- why you should buy Chelsea,
14 correct?

15 A Correct.

16 Q And he also said they had a strong board of directors,
17 remember?

18 A I don't remember that.

19 Q Might have been from another major pharmaceutical
20 company, I don't remember. You don't remember?

21 A No recollection.

22 Q And he was saying you should buy Chelsea because I,
23 Martin Shkreli, think Chelsea is a very good company from a
24 scientific standpoint, correct?

25 A Yes.

Austin - Cross - Agnifilo

1269

1 Q And he would send you a great deal of information to back
2 up that conclusion?

3 A Yes.

4 Q And it turns out Chelsea didn't do all that well, right?

5 A No.

6 Q And can I ask you, do you hold Martin in part responsible
7 for the fact that Chelsea didn't do better?

8 A No.

9 Q Do you hold him responsible for giving you strong
10 opinions that ended up not coming true?

11 A No.

12 Q Did you always think that he was doing the best he could?

13 A I think in terms of recommendations he was doing the best
14 he could.

15 Q And he was giving you sort of the science, as he
16 understood it? That was from your perspective?

17 A Correct.

18 Q Do you remember if at one point you gave Martin -- you
19 sent him a check of some sort, money, funds?

20 And I don't mean the funds that we talked about in
21 the investment context. As payment.

22 A I don't. I remember I either gave Martin or gave his
23 sister money for rent.

24 Q And tell us what you remember about that, if you could.

25 A I think Martin's sister was having a tough time. I can't

Austin - Cross - Agnifilo

1270

1 remember too much about it. I had not met the sister. And I
2 remember Martin just saying the sister was having a real hard
3 time and was having some financial problems. And I think I --
4 I don't know if I sent it to Martin or sent it to his sister,
5 but I believe I paid her rent for at least a couple months.

6 Q And that was a gift, in essence?

7 A It was a gift.

8 Q It wasn't a quid pro quo for any aspect of Martin's
9 business, it's because you're a nice person and you wanted to
10 help out Martin's sister.

11 A Yes.

12 Q Do you recall from time to time Martin would send you and
13 Simon Pedder detailed breakdowns of different pharmacy
14 companies?

15 A I can't recall but -- I can't recall.

16 Q What I'm going to do, I'm going to ask you to just look
17 at Defense Exhibit 1050.

18 Actually, you're saying that you think it happened,
19 you can't recall the specifics?

20 A I cannot recall. I would not be at all surprised.

21 Q All right. Now, I know Simon Pedder at some point said
22 tell Martin to stop contacting me, but from your perspective,
23 I mean, Martin gave you and Mr. Pedder a great deal of
24 scientific information, correct?

25 A Yes. At least I think that's what Martin felt.

Austin - Cross - Agnifilo

1271

1 Q Okay. Well, you were getting these lengthy e-mails,
2 correct?

3 A Yes.

4 Q And from time to time, Mr. Pedder would be copied on the
5 e-mails, correct?

6 A Yes.

7 Q And from time to time, Kathryn McNeil, the head of
8 investor relations at Chelsea, would be copied on the e-mails,
9 correct?

10 A I can't recall, but I'm assuming, yes.

11 Q And did -- now, do you know anything about Simon Pedder's
12 background, just based on your personal knowledge as
13 10 percent shareholder in Chelsea?

14 A At the time I knew a lot about his background. If you
15 ask me about his background right now, I couldn't tell you.

16 Q Fair enough.

17 Now, did Simon Pedder ever say to you: This
18 scientific stuff we're getting from Martin is just all wrong?

19 A I don't think so.

20 Q I'm just going to ask you if you remember. Do you
21 remember if in 2005 you sent a check addressed to Intrepid
22 Capital with Martin's name on it on El Coronado letterhead in
23 the amount of \$5,000?

24 A I don't remember.

25 Q Are you saying it conclusively didn't happen or you

Austin - Cross - Agnifilo

1272

1 just don't --

2 A No, I'm not saying it didn't happen, I'm just saying I
3 don't remember.

4 Q Now, at one point did ViroPharma rise in price and cause
5 you to have sort of a positive investment in ViroPharma?

6 A I can't remember.

7 I did go back and ask my office to look into
8 ViroPharma, and they told me that I had, I think, a \$200,000
9 loss in ViroPharma.

10 Q Overall?

11 A Overall.

12 Q My question is at some point, only if you remember, that
13 there was sort of a spike in ViroPharma and that the stock
14 went up for a period of time?

15 A I can't recall. I can't recall either way.

16 Q I understand. And you have no recollection as to whether
17 the \$5,000 check was being thankful to Martin for putting you
18 into ViroPharma?

19 A I would be very surprised if it was.

20 Q Why is that?

21 A I just can't recall doing that. It's the kind of thing I
22 normally don't do.

23 Q Do you recall Martin having meetings with people from
24 Lehman in connection with raising money for Novogen?

25 A I remember meeting some people with Lehman -- at Lehman

Austin - Cross - Agnifilo

1273

1 Brothers and talking about Novogen. I can't remember what it
2 was about.

3 Q And is there another company related to Novogen,
4 Marshall?

5 A Marshall Edwards.

6 Q Marshall Edwards. Okay.

7 Do you remember conversation with people from Lehman
8 in regard to raising money both for Novogen and for Marshall
9 Edwards?

10 A I don't.

11 Q Do you remember that Martin actually set some of these
12 meetings up with Lehman; do you have any recollection of that?

13 A I don't, but I wouldn't be surprised because I had
14 meetings with Janney Montgomery about the same thing that was
15 set up by Frank Ferrara and other people, that were set up by
16 other people also.

17 Q Right. And, so, these would be meetings that were
18 related to -- Novogen and Marshall Edwards were companies that
19 you had investments in at the time, correct?

20 A Yes.

21 Q And those companies needed funding at the time?

22 A Yes.

23 Q And that funding was going to come from Lehman.

24 THE COURT: Is that a question?

25 MR. AGNIFILO: Yes.

Austin - Cross - Agnifilo

1274

1 Q Those fundings that they needed were going to come from
2 Lehman, the company?

3 A It did not come from Lehman.

4 Q But there were meetings towards that end?

5 A The meeting was to see if Lehman had any interest. And
6 you know, I had a number of meetings with other people about
7 that same thing also.

8 THE COURT: Counsel, I don't know about Mr. Austin,
9 but it would really help me hear you much more clearly if you
10 would use the mic.

11 MR. AGNIFIL0: Sure, Judge.

12 THE COURT: Thank you.

13 Q So in addition to Chelsea, Martin suggested other stocks
14 for you, correct?

15 A He did.

16 Q And some of those stocks you followed his selections and
17 some of them you didn't; fair to say?

18 A Fair to say.

19 Q And he would give you information on the stocks that he
20 suggested to you on a regular basis, correct?

21 A Yes.

22 Q In other words, with Chelsea, he would pepper you with
23 information about Chelsea over the course of a lengthy period
24 of time, correct?

25 A Yes, I got information from Chelsea from Martin and, you

Austin - Cross - Agnifilo

1275

1 know, from many other people.

2 Q But when Martin gave you information about Chelsea, he
3 would give you information on a weekly or biweekly basis; fair
4 to say?

5 A Yes. Most people did.

6 Q And that's true with Novogen as well; correct, he gave
7 you a lot of information about Novogen?

8 A I can't recall. He gave me -- he did give me information
9 about Novogen. I can't recall how much information it was.

10 Q ViroPharma as well?

11 A Again, I can't really remember. ViroPharma was I think
12 one of the names he liked. And I was an investor in
13 ViroPharma, so I'm assuming he gave me information.

14 Q And Amgen do you remember that company?

15 A Yes.

16 Q And Pharmacopia?

17 A Yes.

18 Q Do you remember he thought that you should short a
19 company called Telik?

20 A I don't recall.

21 Q Did he recommend from time to time that you should short
22 companies?

23 A He did.

24 Q And correct me if I'm wrong, he would say to you that he
25 thought that this company's drug, whichever one it was, was

Austin - Cross - Agnifilo

1276

1 going to fail some FDA clinical trial, correct?

2 A Yes.

3 Q And what would typically happen in your experience is if
4 the drug failed in the clinical trial, the stock would lower
5 in price.

6 A Yes.

7 Q And Martin, fair to say, would give you a great deal of
8 information from time to time on why he thought these
9 different drugs would fail their clinical trials?

10 A Yes.

11 Q And sometimes he was right, right?

12 A I can't recall. I never took him up on any of his
13 shorts.

14 Q All right. You think never?

15 A I think I did with Mann, but I did not short it, I bought
16 a put.

17 Q Tell the jury, what's a "put."

18 A A put is an option that if it goes down, you would
19 make -- it was profitable.

20 Q And it was Mankind, does that sound right?

21 A Yes.

22 Q What do you recall about that particular trade?

23 A I don't recall.

24 Q But you remember you bought a put?

25 A I bought a small put.

Austin - Cross - Agnifilo

1277

1 Q Which means that if the stock lowers in price you, as an
2 investor, make money?

3 A Yes.

4 Q And that was based on Martin's suggestion?

5 A Martin and in other research reports also.

6 Q And you said that at least in regard to Chelsea -- I know
7 other people as well -- Martin was out looking for available
8 stock for you to buy, correct?

9 A Correct.

10 Q So that you could assemble your Chelsea position.

11 A Correct.

12 Q Which you did, over ten percent.

13 A Correct.

14 Q And at that point, you were Chelsea's largest
15 shareholder?

16 A Correct.

17 THE COURT: I think we're starting to circle around.

18 MR. AGNIFILO: We're getting there, Judge.

19 THE COURT: Okay.

20 Q Now, when Martin started Retrophin, the company he ended
21 up starting, you said that he had conversation with you about
22 that, correct?

23 A Correct.

24 Q And he offered you his own shares, correct?

25 A Correct.

Austin - Cross - Agnifilo

1278

1 Q So you understood he was the founder of Retrophin, right?

2 A Yes.

3 Q And he was giving you basically his own shares and he
4 wanted you to join the board, correct?

5 A I can't remember if he wanted me to join the board or
6 not. He could have, I just can't recall.

7 Q I mean, you were still having some communication with him
8 from time to time, correct?

9 A From time to time.

10 Q It wasn't the same as it was before the whole mess with
11 being sued, correct?

12 A Correct.

13 Q But he was still talking to you, right?

14 A Yes.

15 Q And did you get the sense that he wanted to sort of win
16 you back, win your faith back in him?

17 A I did.

18 Q And he wanted you to be part of Retrophin and the
19 Retrophin board; do you remember him asking you that?

20 A I don't. I do remember talking about it and him asking
21 also for me to buy some.

22 Q And you didn't want to join the Retrophin board, correct?

23 A I did not.

24 Q Now, in regard to -- was it Lehman who sued you?

25 A Yes.

Austin - Cross - Agnifilo

1279

1 Q You don't know why Lehman decided to sue you, correct?

2 A I was told Lehman -- Lehman was told that I was the
3 backup. And I'm not sure what that meant at the time.

4 Q And Lehman told that to you?

5 A I'm not sure if Lehman told that or the lawyer that I had
6 told me that.

7 Q But Lehman sued you and Martin Shkreli, correct?

8 A Yes.

9 Q Now, Martin at the time was essentially broke, correct?

10 A Correct.

11 Q You, through your hard work, were solvent, correct?

12 A Correct.

13 Q So, you know how things work: Lehman might have just
14 wanted to go after the solvent guy, right?

15 A Correct.

16 Q That could be the reason, right?

17 A It could be the reason.

18 MR. AGNIFILO: Give me one second.

19 (Pause in proceedings.)

20 MR. AGNIFILO: Mr. Austin, I thank you for your
21 time. I hope you enjoy your time in New York?

22 THE WITNESS: Thank you.

23 THE COURT: Is there any redirect of this witness?

24 MS. SMITH: Yes, very briefly, your Honor.

25 THE COURT: All right. Thank you.

Austin - Redirect - Smith

1280

1 DIRECT EXAMINATION

2 BY MS. SMITH:

3 Q Mr. Agnifilo just asked you about the Lehman Brothers
4 suit. Where could Lehman Brothers have gotten your name or
5 information from?

6 MR. AGNIFIL0: Objection to the form of the question
7 where Lehman Brothers could have gotten his name.

8 THE COURT: Ask whether he knows.

9 Q Do you know where Lehman Brothers could have gotten your
10 name from?

11 MR. AGNIFIL0: I object to the form of the question,
12 where Lehman Brothers could have gotten his name.

13 THE COURT: Rephrase it, please.

14 Q Are you aware of under what circumstances an investor in
15 a fund could be sued if the manager of the fund causes the
16 fund to fail?

17 MR. AGNIFIL0: I object. It's a legal conclusion.

18 THE COURT: I will overrule the objection.

19 If you know the answer...

20 A Repeat the question, please.

21 Q Are you aware of under what circumstances could an
22 investor in the fund be sued when the manager of the fund
23 causes the fund to fail?

24 A If the investor had agreed to be a backstop to the fund.

25 Q Did you ever agree to be a backstop to Elea Capital?

Austin - Redirect - Smith

1281

1 A No.

2 Q In connection with the way the Defendant -- on cross, you
3 were asked if you believed that the Defendant had your best
4 interest in heart when he was making scientific
5 recommendations or stock recommendations to you.

6 In connection with how the Defendant handled the
7 loss of Elea and the suit from Lehman Brothers, do you believe
8 he had your best interest at heart?

9 MR. AGNIFILO: Objection to the form of the
10 question.

11 THE COURT: Overruled.

12 A No, I don't think he had my best interest at heart.

13 Q You were also asked a lot on cross about Chelsea.

14 A Yes.

15 Q The Defendant was also an investor in Chelsea; is that
16 right?

17 A Elea was an investor in Chelsea. And it was my
18 impression that Martin was also an investor in Chelsea, but
19 I'm not -- I didn't know that.

20 Q And did you authorize the Defendant to talk to Chelsea on
21 your behalf as your personal representative?

22 A No.

23 Q You were asked on cross about the value of your total
24 position in Chelsea at its height, and I believe you said it
25 was \$30 million.

Austin - Recross - Agnifilo

1282

1 What was the ultimate value of that position?

2 A Well, I think the ultimate value was much, much less. I
3 think I ended up losing five to six million dollars on that
4 investment.

5 Q And you also were asked on cross about shorting these
6 various biotechnology stocks. When the Defendant was
7 recommending shorting a biotechnology stock based on the
8 science or the FDA process, he's asking you to bet that the
9 company drug will fail; is that right?

10 A Yes.

11 MS. SMITH: No further questions, your Honor.

12 MR. AGNIFILO: I have a few.

13 THE COURT: Okay.

14 RECROSS EXAMINATION

15 BY MR. AGNIFILO:

16 Q You brought Martin to North Carolina with you to meet at
17 Chelsea, correct?

18 A No.

19 Q You knew of -- he surprised you there? Did he surprise
20 you when he showed up at the Chelsea office the same time you
21 did?

22 A No.

23 Q You knew he was coming?

24 A I knew he was coming. He asked to come with me.

25 Q And you said okay?

Austin - Recross - Agnifilo

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1 A I said okay.

2 Q And then you had walked around the Chelsea offices with
3 him side-by-side for several hours, correct?

4 A Yes.

5 Q And he spoke to Chelsea people in your presence, correct?

6 A Yes.

7 Q And you knew he was having conversations with Chelsea
8 people on the phone when you were not on the phone, correct?

9 A Yes.

10 Q And he would report these back to you, correct?

11 A Yes.

12 Q You don't know why, you don't know why Lehman sued you,
13 correct?

14 THE COURT: Use the microphone, please.

15 Q You don't know why you were put in that lawsuit, correct?

16 A Correct.

17 Q I mean you suspect, but you don't know, right?

18 A Correct.

19 Q And isn't it fair to say Martin denied that he told
20 anything to Merrill to put you in that lawsuit?

21 A Merrill or Lehman?

22 Q I'm sorry, the lawsuit?

23 A The lawsuit.

24 Q There's only one lawsuit, right?

25 A Only one lawsuit.

Austin - Recross - Agnifilo

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1 Q Fortunately. One is too many.

2 A Yes.

3 Q And there's been -- you have no evidence that Martin said
4 to Lehman that you were backing him, correct?

5 A I have no evidence.

6 Q And the Lehman suit got dismissed against you.

7 A Yes. Lehman went bankrupt.

8 Q Right. But the suit got dismissed.

9 A I'm not sure what happened with the suit. Lehman went
10 away.

11 Q Right. Not because of you.

12 A Not because of me.

13 MR. AGNIFILO: Thank you, sir.

14 MS. SMITH: No further questions, your Honor.

15 THE COURT: Mr. Austin, thank you for your time.

16 You're excused.

17 THE WITNESS: Thank you.

18 THE COURT: Have a nice weekend. Safe travels back.

19 (Witness excused.)

20 THE COURT: How are the jurors doing? Are you in
21 need of a little break or can you continue for another hour?

22 Yes? Okay.

23

24 (Continued on next page.)

25

F. Hassan - direct - Kasulis

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1 (Continuing.)

2 MS. KASULIS: Your Honor, shall we call our next
3 witness?

4 THE COURT: Yes.

5 MS. KASULIS: The Government calls Fred Hassan to
6 the stand.

7 THE COURT: Good morning, sir, have a seat.

8 F R E D H A S S A N ,

9 called by the Government, having been first duly sworn, was
10 examined and testified as follows:

11 THE COURT: Have a seat and spell and state your
12 full name for the record.

13 THE WITNESS: Fred Hassan, H-A-S-S-A-N .

14 THE COURT: Thank you. Please proceed.

15 MS. KASULIS: Thank you, Your Honor.

16 DIRECT EXAMINATION

17 BY MS. KASULIS:

18 Q Good morning, Mr. Hassan.

19 A Good morning.

20 Q Where do you currently live?

21 A In Boca Raton, Florida.

22 Q And how long have you lived there?

23 A We've had a house there since '03, but we moved there
24 around 2011, 2012.

25 Q And where did you live before you moved to Boca Raton,

F. Hassan - direct - Kasulis

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1 Florida?

2 A In New Jersey.

3 Q And where did you grow up?

4 A In Pakistan.

5 Q How old are you, sir?

6 A I'm 71.

7 Q Are you married?

8 A Yes.

9 Q And what is your spouse's name?

10 A Noreen.

11 Q Do you have any children?

12 A Yes.

13 Q How many children do you have?

14 A Three.

15 Q And what are their names?

16 A Sabrina, Daniel and Sarah.

17 Q And Sarah, is her full name Sarah Hassan?

18 A That is correct.

19 Q Could you please describe your education to the jury.

20 A I grew up in Pakistan. I went to school in England. I
21 got my degree in chemical engineering from Imperial College in
22 London. Then I went back and worked in Pakistan for three
23 years in a fertilizer company.

24 Then I came back to this country to study business

25 in Harvard Business School. I got my MBA in 1972 and then I

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1 joined the pharmaceutical industry right after that.

2 Q Do you have a Ph.D. or doctorate, sir?

3 A No, I don't.

4 Q Could you please step the jury through your employment
5 history?

6 A So, I started with Sandoz in 1972 which is now called
7 Novartis. It's a large pharmaceutical company. I was with
8 Sandoz to 1989. My last job there was running the largest
9 operation in Sandoz USA. Then I joined another large company
10 called Wyeth, also in -- as the head of the pharmaceuticals
11 area and my job there was expanded by gaining the other units
12 in Wyeth. In 1997 I left Wyeth to become the chief executive
13 officer of Pharmacia & Upjohn a publicly traded company.

14 Q Mr. Hassan, what is a CEO?

15 A Chief executive officer.

16 Q And what is a chief executive officer of a company?

17 A Generally chief executive officer works with the board on
18 the strategy and the oversight of the company and also tries
19 to set the culture and the direction in the company. That's
20 primarily the job in a larger company.

21 Q And when you referred to the board, what are you
22 referring to?

23 A The board of directors represents the shareholders and
24 they work -- they are independent of the chief executive
25 officer and they oversee the work of the management and the

F. Hassan - direct - Kasulis

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1 head of management is the chief executive officer.

2 Q And before we proceed with your employment history, why
3 did you join the pharmaceutical industry?

4 A I always loved innovation. I love chemistry. I was a
5 chemical engineer. This was my way of trying to get into an
6 industry that would do a lot of innovation and hopefully do
7 some good things for people.

8 Q Now, directing your attention back to your employment
9 history, you say that you were the CEO of Pharmacia; is that
10 right?

11 A That is correct.

12 Q And when did that position begin?

13 A So I first joined a company called Pharmacia & Upjohn
14 which was a company formed with the merger of the old Upjohn
15 company with Pharmacia, a Swedish company. And I was the CEO
16 of that company from 1997 to 2000.

17 Then Pharmacia & Upjohn combined with a large
18 company called Monsanto and the new name of the company was
19 called Pharmacia and I was the CEO of that company and that
20 went from 2000 to 2003, at which point there was a merger with
21 Pfizer and I went on to become chief executive officer of a
22 different company.

23 Q And what company was that?

24 A That company was called Schering-Plough and I became the
25 I chief executive officer of Schering-Plough in 2003.

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1 Q And the companies that you referred to, Pharmacia,
2 Pharmacia & Upjohn, Monsanto, Schering-Plough, what kind of
3 companies are these?

4 A These are very large companies that typically operate in
5 65 countries around the world. They spend a lot of money in
6 basic research and in translational and development research
7 to take that science and bring it into a drug that can be of
8 use to the patients and they also have commercial operations
9 in all of these countries. They are very large operations.

10 Q And how long were you the CEO of Schering-Plough?

11 A I was the CEO of Schering-Plough for about six and a half
12 years, from April '03 until '09; late, late '09.

13 Q And what was your next position?

14 A So in late '09, after the merger with Merck,
15 Schering-Plough merged with Merck, I joined a private equity
16 firm Warburg Pincus as a senior advisor and subsequently I
17 went on to become the chairman of their largest portfolio
18 company, Bausch & Lomb. About a year after I joined this
19 company, they invited me to join them as a partner.

20 Q And what is Warburg Pincus? You referred to it as a
21 private equity firm. What is that?

22 A So private equity companies primarily build up big funds
23 which are funds coming from pension funds or sovereign wealth
24 funds or individuals, just big funds, and they use these funds
25 to invest in businesses and to also help the management teams

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1 with these businesses.

2 And then typically five to ten years out, they would
3 return the money on the investors. Hopefully more money than
4 what the investors put in.

5 Q And as part of your employment with Warburg Pinkus, you
6 said that you were chairman of Bausch & Lomb; is that correct?

7 A Yes. So Warburg Pincus had taken Bausch & Lomb private
8 after it faced severe problems as a public company and they
9 needed some help and they asked me to become the chairman of
10 this company.

11 Q And what were your responsibilities in that role?

12 A Primarily I was successful in attracting a very good
13 colleague who had worked with me at Schering-Plough before
14 called Brent Saunders. He became the chief executive officer.

15 My responsibility there was to primarily be the
16 chairman of the board of directors and also, on a personal
17 basis, to be of some help to Brent as he tried to improve the
18 operations at Bausch & Lomb.

19 Q And for how long were you the chairman of Bausch & Lomb?

20 A From March 2010 until August 2013 when there was a sale
21 of Bausch & Lomb to Valeant.

22 Q And then what did you do after there was the sale of
23 Bausch & Lomb to Valeant?

24 A I remained with Warburg Pincus. Warburg Pincus is a
25 large private equity firm and we typically have over 100

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1 companies in our portfolio and we typically look at many, many
2 companies to invest in every year. So I've had a pretty busy
3 life there since then looking at different companies,
4 investing in companies, being on the board of certain
5 companies, just quite a busy life.

6 Q And you said that about being on the board of certain
7 companies. Currently which companies are you on the board of?

8 A The two portfolio companies that I'm on the board of
9 right now for Warburg -- is it Warburg Pincus or outside
10 companies, outside Warburg Pincus. I just wanted to clarify.

11 Q Thank you. Outside of Warburg Pincus.

12 A Thank you. I am on the board of directors of three
13 companies at this time; Time Warner here in New York City,
14 Intrexon a company in Palm Beach, Florida -- in west Palm
15 Beach, Florida and also Amgen, a biotechnology company in
16 California.

17 Q Are you involved with any charity organizations?

18 A Yes. I have quite an active role there.

19 Q And can you please explain your involvement with charity
20 organizations?

21 A I try to be helpful wherever I can. I'm trying to give
22 back as much as I can. Perhaps the most physical charity
23 organization is something that I founded in 1997 called
24 Community Hope. We raise a lot of money every year in New
25 Jersey. It's primarily for the benefit of veterans and also

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1 other people with mental illness.

2 It's now become a pretty large nonprofit thing in
3 New Jersey and every year there's a big fundraiser. It just
4 gets bigger and bigger every year. So that's something I'm
5 very proud of.

6 I also am -- until recently I was on the board of
7 American Institute of Stuttering here in New York City. I'm a
8 stutterer myself, so I sponsored that. They try to help
9 stutterers deal with very difficult situations and I'm also
10 supporting an autism charity in Florida.

11 Q Thank you. Have you authored any books or publications?

12 A I have been in many business books, primarily Harvard
13 Business Review. I authored a very good article -- well, my
14 opinion a good article in 2011 called The Frontline Advantage
15 and then also a book in 2013 called Reinventing Leaders, A
16 Playbook For Serial Success.

17 Q Have you heard of a fund called Dynagrow Capital?

18 A Yes.

19 Q What is Dynagrow Capital?

20 A This was a family fund that my wife and I put together so
21 our daughter Sarah could be the manager of this fund. She had
22 come out of school and we did believe very strongly in her and
23 her abilities and we put this fund together for her to manage.

24 Q And what is your role in Dynagrow Capital?

25 A As a passive investor. We wanted to give Sarah the

F. Hassan - direct - Kasulis

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1 breadth of being able to do what a fund manager needs to do.

2 Q And what if any control do you exercise as far as
3 investing decisions of Dynagrow Capital?

4 A There are no formal controls, but Sarah is welcome to
5 always ask me about an opinion about a portfolio company or a
6 possible investment that she might be making but there are no
7 formal controls.

8 Q And who ultimately makes the decisions with respect to
9 how Dynagrow capital's funds are invested?

10 A Sarah.

11 Q When was Dynagrow Capital founded?

12 A It was -- my recollection is around 2010. This is
13 shortly after Sarah came out of school, MBA and we thought
14 this would be a very good way for her to get going.

15 Q And in the 2010/2011 time period how much -- what was the
16 assets under management for Dynagrow Capital?

17 A My recollection is they vary between 10 and \$20 million
18 which was about 20 percent of our net worth.

19 Q Do you know an individual named Martin Shkreli?

20 A Yes.

21 Q How do you know him?

22 A He was introduced to me via Sarah through a meeting in a
23 large networking event that occurs in our industry every year,
24 every January. I got to meet him there the first time.

25 Q Had you heard of Martin Shkreli prior to meeting him?

F. Hassan - direct - Kasulis

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1 A I believe I might have. I believe I did hear about him,
2 I don't know exactly when, from my Schering-Plough colleagues
3 especially Brent Saunders as being a very good person to
4 invest in.

5 Q And who is Brent Saunders?

6 A Brent Saunders is the person I mentioned earlier on who I
7 brought in to be the CEO of Bausch & Lomb. He's been my
8 colleague since 2003. I hired him into Schering-Plough to run
9 our compliance function which was a new function we created.
10 Because at that time Schering-Plough was facing severe
11 problems with various authorities and also with various other
12 matters related to just good business practices. So we
13 brought in a new person to help us change that and that was
14 Brent Saunders and he worked with me for a long time after
15 that.

16 Q Have you heard of an individual named Ken Banta?

17 A Yes.

18 Q And who is he?

19 A He was somebody working at Pharmacia and Upjohn in 1997
20 when I went there as chief executive officer. The job was
21 strategic communication.

22 Q When you say "strategic communications" what do you mean
23 by that?

24 A This was a function that existed at Pharmacia & Upjohn in
25 reporting to the chief financial officer of Pharmacia & Upjohn

F. Hassan - direct - Kasulis

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1 at that time. It had been put in there before I got there and
2 it was essentially doing project work around communications
3 and Ken Banta is very good at that. He's a very good
4 communicator.

5 Q How would you describe your relationship with Mr. Banta?

6 A Good relationship good business colleague. He's very
7 helpful in communications matters. I tend to have a pretty
8 large footprint in the industry and he's clearly out there
9 with many people, along with many people who worked with me.
10 Basically it's a good relationship.

11 Q Do you consider yourself to be close to Mr. Banta?

12 A No. I have a very small circle of very close friends,
13 probably two dozen. He's certainly part of my circle but a
14 much, much larger circle.

15 Q And how often do you speak to Mr. Banta?

16 A Rarely, but when he tries to reach me I tried to be
17 responsive, but rarely.

18 Q Now; directing your attention back to the defendant,
19 Mr. Shkreli, when do you believe was the first time you met
20 him?

21 A It was at J.P. Morgan conference. This large networking
22 conference that was occurring in San Francisco in January of
23 2011.

24 Q And how do you believe you came to meet Mr. Shkreli at
25 that conference in January 2011?

F. Hassan - direct - Kasulis

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1 A It's quite a busy conference. About 6,000 people come to
2 this place with a lot of intense networking.

3 And it's not easy to have formal short meetings with
4 lots of people, but in this case Sarah reached out to me and I
5 juggled my calendar and did have a short meeting with
6 Mr. Shkreli while I was there.

7 Q And let's talk a little bit about the conference itself.
8 How often does the conference occur?

9 A This occurs once a year.

10 Q And can you describe what the conference is about?

11 A It's many different things happen. Many different groups
12 in the healthcare ecosystem go there for different reasons.
13 We have the CEOs of the large companies that come and present
14 about the company's future, to analysts in the brokerage
15 houses who might be there, or investors as well who might be
16 there.

17 Also there may be a lot of other networking going on
18 between suppliers to the industry who use that as an
19 opportunity to get to meet a lot of people, consultants,
20 headhunters, lots of people would show up there.

21 Q And for how long have you been attending the J.P. Morgan
22 healthcare conference?

23 A Since January 2010.

24 Q And so when you met Mr. Shkreli in January 2011 at the
25 J.P. Morgan healthcare conference, that was the second time

F. Hassan - direct - Kasulis

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1 you had attended that conference?

2 A That is correct.

3 Q Have you attended that conference every year since that
4 time?

5 A Yes.

6 Q And on average how many people do you meet at the J.P.
7 Morgan healthcare conference in a given year?

8 A Typically about 100, maybe 150. Every time -- I do have
9 a large footprint and also it's a very efficient way to meet a
10 lot of people so one does get to meet quite a few people when
11 one is there.

12 Q Now you had mentioned that Sarah had asked you to meet
13 with Mr. Shkreli?

14 A Yes.

15 Q At the J.P. Morgan healthcare conference in January of
16 2011.

17 Why did you agree to meet with Mr. Shkreli?

18 A I already heard he was a good person to invest in, but
19 that aside, Sarah asked me to do it and I did it as a favor to
20 my daughter.

21 Q And how old was your daughter at the time, do you recall?

22 A I'm trying to do some math here. Probably 20 or 21. I'm
23 totally wrong on the math.

24 Q And you did in fact meet with Mr. Shkreli; is that right,
25 at that conference?

F. Hassan - direct - Kasulis

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1 A Yes.

2 Q And where did you meet him?

3 A I don't remember exactly where, but typically people
4 would meet in a public place or in the room that is set aside
5 for these meet and greet meetings which could be in many
6 different places in San Francisco. I don't remember exactly
7 where I met him.

8 Q And for how long did you meet with Mr. Shkreli?

9 A About 20 to 30 minutes.

10 Q And what was your understanding as to the nature of
11 Mr. Shkreli's relationship with your daughter, Sarah Hassan at
12 the time that you first met Mr. Shkreli?

13 A I didn't know exactly what was the context of that
14 relationship but she asked me to meet him and I met him so
15 I -- I don't know what was going on at that time.

16 Q And why did you meet Mr. Shkreli for only approximately
17 20 to 30 minutes?

18 A Typically that's a meet and greet time that one does to
19 keep it very -- very -- it's a long ways to get to San
20 Francisco so one tries to be careful not to make it too short
21 but one typically tends to have half hour slots in the
22 calendar for these meet-and-greet-type meetings.

23 Q And was anyone else at the meeting between yourself and
24 Mr. Shkreli?

25 A Not that I remember.

F. Hassan - direct - Kasulis

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1 Q And at that meeting, what do you recall discussing with
2 Mr. Shkreli?

3 A I don't remember the contents. I know it was a pleasant
4 experience. He was a pleasant person. Very respectful. A
5 little intimidated by me. Just a little -- just very
6 respectful, a pleasant person. He seems to be very much a
7 homework kind of person. He had done his homework about me
8 and very analytical kind of person.

9 Q What, if anything, did you discuss about Martin Shkreli's
10 businesses at the time?

11 A I don't remember what we discussed.

12 Q Did you exchange contact information with Mr. Shkreli
13 during that meeting?

14 A Tax?

15 Q Contact information.

16 A I'm sorry, I'm trying to understand what you said.

17 Q Did you exchange any sort of contact information?

18 A Oh, contact information, no, no, no.

19 Q And after you met with Mr. Shkreli in January of 2011,
20 did you ever see him again?

21 A I don't remember.

22 Q Now after you met Mr. Shkreli in January of 2011, did you
23 come to have an understanding of Sarah's relationship with
24 Martin Shkreli in the 2011/2017 time period?

25 A At some point she did tell me that she had invested in

F. Hassan - direct - Kasulis

1300

1 the company that he was running.

2 Q And do you know the name of that company?

3 A Retrophin.

4 Q And what role, if any, did you play in Retrophin?

5 A Very little.

6 Q What do you mean by "very little"?

7 A I didn't know the product. I didn't know the mission of
8 the company. I mispronounced the name a few times. Until
9 recently I used to call it something else so I wasn't that
10 close to it.

11 Q And when you say you weren't that close to it, were you
12 close to it at all?

13 A I wasn't close to it at all.

14 Q What was your -- you had mentioned Brent Saunders. Do
15 you know if Brent Saunders had any role in Retrophin?

16 A No.

17 Q Now, as an employee of Warburg Pincus, what if any
18 limitations are there in you making investments in companies?

19 A Warburg is a very cautious firm and they have very strict
20 compliance procedures for partners to go through before
21 investments can be made and they often make sure that if a
22 possible investment is being made that there are no conflicts
23 with the firm; that the company that is being invested in is
24 not on a special status where there might be a conflict or
25 also that the company that one is investing in not be

F. Hassan - direct - Kasulis

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1 conflicting with a possible investment that Warburg itself
2 might wish to make so they do go through a lot of these checks
3 before an employee or a partner can make an investment.

4 Q So is it important for you to understand which companies
5 you are in fact invested in?

6 A I do my best. In this case, Sarah was able to
7 communicate directly with whichever compliance person was
8 involved and got those clearances.

9 Q And the clearances were with respect to Dynagrow's
10 investment in receipt phone; is that correct?

11 A That's my understanding, yes.

12 Q Did you ever personally invest your money with Martin
13 Shkreli?

14 A No, I didn't.

15 Q Do you know if Sarah, your daughter, ever invested her
16 own money with Martin Shkreli?

17 A At some point in time I learned she had invested money in
18 the previous hedge fund that he had.

19 Q Do you know the name of that hedge fund?

20 A MSMB Capital.

21 Q Do you recall ever speaking to Martin Shkreli on the
22 phone, sir?

23 A No, I don't.

24 Q Can you describe your relationship with Martin Shkreli in
25 the 2011/2012 time period?

F. Hassan - direct - Kasulis

1302

1 A Probably cordial and encouraging, but beyond that there
2 was no personal contact as to the best of my knowledge.

3 Q Did you see yourself as a mentor to Martin Shkreli during
4 that time period?

5 A No.

6 Q Did you serve as a reference for him during that time
7 period?

8 A No.

9 Q Did you serve as an advisor to Martin Shkreli with
10 respect to any of his businesses in the 2011/2012 time period?

11 A No.

12 Q Or any time period?

13 A No.

14 (Continued on next page.)

15

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F. Hassan - direct - Kasulis

1303

1 DIRECT EXAMINATION (continuing)

2 BY MS. KASULIS:

3 Q What, if any, agreements did you have with Martin Shkreli
4 about his use of your name in connection with any of his
5 businesses?

6 A There was no agreement.

7 Q Did you periodically receive e-mail communication from
8 Martin Shkreli in the 2011, 2012 time period?

9 A I didn't read all of my e-mails, but it is entirely
10 possible that he might have included my name on some e-mails.
11 I don't remember them very well.

12 Q Do you have an understanding as to why Mr. Shkreli would
13 be e-mailing you?

14 A He knew a lot of my former colleagues, so it is possible
15 in one or those e-mails he might have put my name in there
16 too.

17 Q Now, on average, during this time period, 2011, 2012, in
18 2013, how many e-mails, on average, would you receive in a
19 given day?

20 A A lot. Enough that -- so many that I couldn't read them
21 all and I often used my admin to help me them, just a lot,
22 just a lot. Dozens.

23 Q When you say your admin, who are you referring to?

24 A I had different admins at different times during that
25 time period. I had an admin called Johannah.

F. Hassan - direct - Kasulis

1304

1 Q Who was her last name?

2 A Olsher, O-L-S-H-E-R.

3 Q Any other admin individuals who worked for you that you
4 recall?

5 A Johannah Olsher was followed by another admin called
6 Debbie Noel, N-O-E-L.

7 Q And did you ever respond to any of Mr. Shkreli's e-mails?

8 A I believe I responded to one e-mail that he sent to me,
9 which was a congratulatory note regarding an article that came
10 in the *New York Times* where I was interviewed in the Sunday
11 business section.

12 Q Why did you respond to him at that time?

13 A I have a tendency to respond to e-mails where it is a
14 little bit more personal kind of a thing of that type, just to
15 turn that thing around within 48 hours, and I typically send
16 some kind of acknowledgment to let them know that I read the
17 e-mail.

18 Q Is it possible when you responded to Mr. Shkreli in the
19 same sorts of e-mails that he had sent you in 2011, 2012 time
20 period?

21 A Very possible. By nature I don't like to see e-mails not
22 be acknowledged. I do try to turn around and send them. I am
23 not always there with that target, but I try to turn them
24 around.

25 Q I am showing what has been marked and it is tab 1 in your

F. Hassan - direct - Kasulis

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1 binder, sir, in front of you. It has been marked for
2 identification as Government Exhibit 103-18. It is in the
3 binder in front of you.

4 A Okay.

5 Q Do you recognize this e-mail, Mr. Hassan?

6 A No.

7 Q Does this e-mail include your e-mail address?

8 A Yes. My caretgroup address.

9 MR. BRAFMAN: Your Honor, I have no objection if you
10 would like to offer it.

11 THE COURT: Did you want to offer it, ma'am?

12 MS. KASULIS: Yes, Your Honor. The Government
13 Exhibit moves 103-18 into evidence.

14 THE COURT: We will admit that exhibit without
15 objection.

16 (Government's Exhibit 103-18 was received in
17 evidence.)

18 Q Mr. Hassan, I know you have been coughing a little bit.
19 Do you have water there available for you?

20 THE COURT: He has water. There is plenty more.

21 THE WITNESS: Thank you.

22 MS. KASULIS: No problem.

23 A Yeah. So I do not recognize this e-mail.

24 Q Do you not recognize it or do you not recall the e-mail?

25 A I don't recall the e-mail. This e-mail must have

F. Hassan - direct - Kasulis

1306

1 happened. I don't recall it.

2 Q So it appears at the bottom of the e-mail, it looks to be
3 an e-mail from Mr. Shkreli to himself, which appears to be
4 some sort of a group entitled Retrophin (RTX) completes
5 reverse merger. It appears then that you respond to him on
6 Thursday, December 20, 2012. Is that your e-mail address,
7 sir, fred.hassan@caretgroup.com?

8 A Yes, it is one of my addresses.

9 Q Do you believe that you did, in fact, write this e-mail,
10 sir?

11 A I either wrote it or it's the kind of e-mail that I very
12 quickly send when I get news of this type.

13 Q So you don't recall specifically sending this e-mail --

14 A No.

15 Q -- is that right?

16 A No.

17 Q And in the e-mail, it's written, "Martin, I wish you
18 success. Happy holidays, Fred."

19 A Yes.

20 Q In response, Mr. Shkreli writes, "Thanks, and happy
21 holidays" at the top of the e-mail chain. Is this the typical
22 e-mail that you would typically write in response to these
23 sorts of e-mails from individuals?

24 A If I knew the individual better, I might add a few other
25 things in there, but in this case this was a standard way of

F. Hassan - direct - Kasulis

1307

1 encouraging somebody, but saying thank you for sending me this
2 e-mail and saying happy holidays.

3 Q So you don't recall this e-mail exchange?

4 A No, I don't.

5 Q Now, is your reputation in the healthcare important to
6 you?

7 A Yes.

8 Q Why is that?

9 A Because I worked so hard year after year trying to build
10 it. It's just something that's very dear to me, very
11 important to me.

12 Q And have you ever heard of a company called SeraCare?

13 A No.

14 MS. KASULIS: Your Honor, I have no further
15 questions at this time.

16 MR. BRAFMAN: Your Honor, I just need two minutes
17 before I proceed on a personal nature.

18 THE COURT: All right. Of course. Would you rather
19 take the lunch break first or --

20 MR. BRAFMAN: It is up to you. We are not going to
21 finish before the lunch, so we may as well give the jury lunch
22 now.

23 THE COURT: How much cross do you have?

24 MR. BRAFMAN: I think about 45 minutes to an hour.

25 THE COURT: Well, how are the jurors doing? Would

1308

1 you like to take a quick break? Why don't we take a lunch
2 break then.

3 Would you mind please coming back to the jury room
4 no later than 1:15. It is a little less than an hour. We
5 will proceed at that time. Please leave your notebooks on the
6 chair face down.

7 Please don't talk about the case with anyone and
8 please don't read any social media or talk to anyone about
9 this case. Thank you.

10 (Jury exits the courtroom.)

11 THE COURT: Mr. Hassan, you may step down and have a
12 break.

13 (Lunch recess.)

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1309

1 AFTERNOON SESSION

2 (In open court; jury not present.)

3 THE COURT: Counsel, we had a juror complain that
4 when the document goes up on the screen, it is very small and
5 they can't read the whole document, and then when it is blown
6 up, the document seems to disappears off the screen.

7 Do you have a way to adjust that so it can be read
8 by the jurors once it is in evidence? It is probably a
9 technical thing, but is that something that you could help
10 with?

11 MS. SMITH: Your Honor, we can talk to the Court,
12 the IT, and see if there is any way for them to blow up even
13 more. I mean, what we are trying to have Ms. Balbin do is
14 highlight the portions we are discussing and make those big
15 enough to see, and I understand when you do that, you can't
16 see the rest of the document. So we can try to scroll, maybe,
17 rather than focus on one area.

18 THE COURT: All right. Thank you.

19 (Jury enters the courtroom.)

20 THE COURT: We have all jurors present. Please have
21 a seat, ladies and gentleman.

22 Mr. Brafman, you may begin your cross.

23 Sir, you are still under oath.

24 CROSS EXAMINATION

25 BY MR. BRAFMAN:

F. Hassan - cross - Brafman

1310

1 Q Good afternoon, Mr. Hassan.

2 A Good afternoon.

3 Q My name is Benjamin Brafman. I represent Mr. Shkreli.

4 You and I have never met, sir; is that correct?

5 A That is correct.

6 Q Are you really seventy-one?

7 A That is correct.

8 Q You look great.

9 A Thank you, sir.

10 Q While we have never had the pleasure of meeting, I did
11 have the pleasure of meeting your daughter Sarah yesterday and
12 questioned her, and I just have a few questions of you, sir,
13 and I will try to be brief.

14 You said, on cross-examination, that you heard of
15 Martin Shkreli in 2010 or you met him for the first time in
16 2010?

17 A I met him for the first time in 2011 at the JP Morgan
18 conference. I heard about him in late 2010 from my friends at
19 Schering-Plough, especially Brent Saunders.

20 Q Okay. And would it be a fair statement, sir, that the
21 things that you heard about Martin Shkreli from Brent Saunders
22 could be described as glowing?

23 A Positive, good fund manager. Good return.

24 Q A very smart guy?

25 A Smart guy. Hard worker.

F. Hassan - cross - Brafman

1311

1 Q Did Brent Saunders also tell you, sir, that he had
2 personally made a lot of money with Martin Shkreli's
3 investments?

4 A He did tell me that he had invested in him and that he
5 had done well.

6 Q Thank you. Now, I think you explained at the beginning
7 that I think you used the word "large footprint" in the
8 pharmaceutical industry, and I know people don't like to say
9 things about themselves, but you are pretty much a legend in
10 the pharmaceutical industry; would that be a fair
11 characterization?

12 A I think we need to be careful how we describe me. I'm
13 very hard working, humble kind of guy.

14 Q I get it, but everybody in the pharmaceutical industry
15 sort of knows the name Fred Hassan as the leader of the
16 industry; would that be a fair statement?

17 A I've been in the industry a long time and I worked in a
18 few companies, so I have gotten to know lots of people, and I
19 remained engaged even beyond the age of 65. So, yes, I am
20 quite well-known in the industry.

21 Q And people have profiled you in very positive ways in
22 leading pharmaceutical periodicals?

23 A I do get profiled, yes, sir.

24 Q And you have also authored books and articles yourself;
25 correct, sir?

F. Hassan - cross - Brafman

1312

1 A Yes.

2 Q So when you say that a young Martin Shkreli met you and
3 appeared to be a little bit intimidated, a lot of young
4 pharmaceutical entrepreneurs or investors would like to get
5 ten minutes with Fred Hassan because it is like talking to a
6 giant of the industry; would that be a fair statement?

7 A I think the giant is a bit of an exaggeration.

8 Q I'm not a giant either, but I'm talking not physically,
9 I'm talking leading figure in your industry?

10 A I'm well-known in the industry and, yes, people do try to
11 see if they can approach me or get to spend time with me. I
12 certainly try my very best to be as approachable as possible.

13 Q Okay, so let's talk about that. I think you mentioned
14 that, at this charity dinner, which you host and as part of
15 the philanthropy that you undertake, you believe that was the
16 first time you met Martin Shkreli?

17 A I did not meet him at the dinner. I heard about him
18 either at the dinner or shortly thereafter at the end of 2010,
19 but I met him in 2011, January 2011.

20 Q And that January 2011, that was a different dinner, it
21 was the JP Morgan Health Conference; correct?

22 A That's the networking event, a very big thing, yeah.

23 Q It is an annual event that JP Morgan sponsors and
24 virtually anyone who is a who's who in the pharmaceutical
25 industry ends up being there at some point?

F. Hassan - cross - Brafman

1313

1 A Many, many people do. I didn't ever attend the event
2 until 2010, partly because there was another big thing that
3 occurs here in New York that Goldman Sachs does, but a lot of
4 people try to go there at that time because it is an
5 opportunity to meet people, not only who work inside the U.S.
6 environment, but also people from around the world.

7 Q And I assume you must meet literally hundreds of people
8 over the years at these or other conferences, and it is
9 physically impossible to remember every person you met and
10 spoke with; is that correct?

11 A That is correct.

12 Q So let me see if I can refresh your recollection as to
13 the first time you may have met Martin Shkreli. Do you recall
14 attending a Healthcare Unplugged Conference in 2005 at a hotel
15 in New York?

16 A There was a conference called CEO's Unplugged that
17 Goldman Sachs used to host every January. I don't know about
18 Healthcare Unplugged, but there was, yes, one.

19 Q In 2005, do you remember -- I'll call it an incident, if
20 you will, when you got up to leave with Ken Banta and Robert
21 Bertolini, two of your business colleagues, you went into the
22 elevator, and a young nerdy kid, maybe 20, ran into the
23 elevator and was in there with the three of you for however
24 long it took to hit the lobby; do you remember that?

25 A No recollection of that.

F. Hassan - cross - Brafman

1314

1 Q No recollection?

2 A No.

3 Q Of a young person asking you and Mr. Banta questions upon
4 question about Vytorin?

5 A No, no recollection whatsoever.

6 Q You are not saying it didn't happen, you just don't
7 remember?

8 A I don't remember.

9 Q Okay. Do you know how Martin Shkreli came to the
10 attention of Ken Banta?

11 A No, I don't.

12 Q And, so, you don't know whether, in that elevator, Martin
13 Shkreli handed his card to Ken Banta?

14 A No, I don't.

15 Q But there came a time where it was clear to you that both
16 Brent Saunders and Ken Banta knew Martin Shkreli; is that
17 correct?

18 A I knew about the Brent Saunders conversation with me,
19 toward the end of 2010. The Ken Banta association, I learned
20 about later on.

21 Q Okay. And let's -- let me just walk you through, very
22 quickly, your very prestigious resume. In 2003, you were at
23 Schering-Plough when you met Brent Saunders, who was then at
24 Pricewaterhouse; is that correct?

25 A Yes.

F. Hassan - cross - Brafman

1315

1 Q And you took him with you, from Pricewaterhouse, and you
2 gave him a job at Schering-Plough?

3 A Yes.

4 Q And then Schering-Plough merged with Merck in 2009; is
5 that is correct?

6 A Yes.

7 Q And it was a substantial merger in the pharmaceutical
8 industry; would that be a fair statement?

9 A Substantial merger, yes.

10 Q And it was well-publicized; is that correct?

11 A Yes.

12 Q Now, among the people who were part of your team of
13 pharmaceutical colleagues, if you will, was certainly Brent
14 Saunders; is that correct?

15 A Yes.

16 Q And Tom Koestler, was he a part of your team?

17 A Yes.

18 Q And Bob Bertolini?

19 A Yes.

20 Q And Ken Banta?

21 A I wouldn't put Ken Banta in the same group. These were
22 people who had worked with me in the executive leadership team
23 for many years. Ken Banta never reported to me directly. And
24 also, in the leader companies I was at, he was not on the
25 company payroll.

F. Hassan - cross - Brafman

1316

1 Q Okay. Now, did Ken Banta ever tell you that he had
2 developed either a personal or business relationship with
3 Martin Shkreli in or about 2005?

4 A No.

5 Q Did you ever know that they became personal friends, that
6 Ken Banta and his husband, Tony Powe, became very close
7 friends?

8 A No, I was never aware of that.

9 Q You had no knowledge of it whatsoever?

10 A No.

11 Q Now, at Schering, Schering also merged with a company
12 called Organon; is that correct?

13 A Yes, Organon.

14 Q Organon, I'm sorry. And they were developing a fairly
15 valuable cancer drug at the time; is that correct?

16 A At that time it wasn't very visible, but it was in the
17 portfolio. It became more visible after the merger with
18 Merck. It has become a very valuable asset now.

19 Q Was Ken Banta one of the leading figures in that merger,
20 if you recall?

21 A He participated along with many others; however, he was
22 not part of the executive team, so.

23 Q What was his job, if you will, at that time?

24 A He is helping with communications as an independent
25 contractor and reporting to someone else other than me.

F. Hassan - cross - Brafman

1317

1 Q Did you have any knowledge of the fact that Ken Banta, in
2 2006, had invested \$250,000 in Elea Capital, a hedge fund that
3 Martin Shkreli was running at that time?

4 A I'm not aware of that.

5 Q In 2008, when Schering sold the company to Merck, it was
6 probation a \$60 billion merger; is that correct?

7 A People have different estimates. Some call it a \$41
8 billion merger, some call it a \$52 billion dollar merger. It
9 really depended on what the stock ended up at on the day of
10 the closing. It was closer to \$52 billion in '09.

11 Q And one of the things that you have learned over the
12 years in the pharmaceutical industry is that the valuation, if
13 you will, of a company may vary from time to time, and when
14 the valuations are made, they may be made in good faith, but
15 they still could change?

16 A Yes. Valuations change all the time.

17 Q Did Brent Saunders ever tell you -- withdrawn.

18 Brent Saunders is one of your closest business
19 colleagues?

20 A He is very close to me, but I have many other close
21 business colleagues, but he's definitely in my close circle.

22 Q I'm not suggesting he is exclusively your colleague, but
23 he is a prominent person in your inner circle?

24 A Yes.

25 Q And Bob Bertolini, is he a prominent person in your inner

F. Hassan - cross - Brafman

1318

1 circle?

2 A Yes.

3 Q Did Brent Saunders and Bob Bertolini ever tell you that
4 there came a time where, after a meeting in New Jersey, they
5 were talking to Martin Shkreli about the three of them
6 starting a private equity fund?

7 A I was not aware of that.

8 Q Never?

9 A No.

10 Q Okay. Now, at the same time of the merger, you joined
11 Warburg Pincus shortly thereafter; is that correct?

12 A Yes, sir.

13 Q And Warburg Pincus was a private equity fund?

14 A Yes.

15 Q Does the amount that they have under management vary from
16 time to time depending on the asset?

17 A Yes.

18 Q So it would not be possible for you to sit there and say,
19 on June 21st, the amount under management was X without doing
20 a lot of checking; right?

21 A I'm sorry, I didn't clearly understand you.

22 Q It is a badly formed question.

23 The valuation of a private company can change from
24 time to time?

25 A Yes.

F. Hassan - cross - Brafman

1319

1 Q And even Warburg Pincus, which is a very prominent, very
2 well-respected fund, if I were to ask you today what was their
3 valuation of assets under management in 2012, you would need
4 to do a lot of checking without offering an answer off the top
5 of your head; would that be a fair statement?

6 A Yes. Well, in this case, they were a large company so
7 they themselves would publish the valuations and those would
8 be accessible to many investors, and these were pretty
9 reliable ways of making the valuations for large companies.
10 There are methods of evaluating private operations, like
11 Warburg and others, yes. But -- so I would not need to do
12 independent checking, I could rely on the number that would be
13 published.

14 Q Approximately, Warburg Pincus manages at different times
15 as much as \$40 billion, with a B?

16 A Yes.

17 Q So it is considered -- I don't want to be repetitive, but
18 it is considered a large private equity fund?

19 A It is among one of the larger ones, yes.

20 Q How many people are either associated with Warburg Pincus
21 or employed by Warburg Pincus?

22 A I don't know the total head count.

23 Q Hundreds?

24 A Hundreds, yes.

25 Q Where is it headquartered?

F. Hassan - cross - Brafman

1320

1 A In New York City.

2 Q Where were the pharmaceutical companies that you
3 mentioned earlier, was any one of them located in Kenilworth,
4 New Jersey?

5 A Yes, that was Schering-Plough.

6 Q Now, you don't have any knowledge of a meeting in
7 Kenilworth, New Jersey, between Bob Bertolini, Ken Banta and
8 Martin Shkreli concerning Martin providing them with stock
9 tips?

10 A I'm not aware of that meeting.

11 Q Do you know if Brent Saunders ever used Martin Shkreli's
12 stock tips to make money?

13 A I'm not aware of that.

14 Q When you testified earlier, sir, about the fact that
15 Brent Saunders told you that he had done very well as a result
16 of his relationship with Martin Shkreli, what did you
17 understand that to mean?

18 A I understood that to mean that he had invested in Martin
19 Shkreli's fund and the returns on his investment were quite
20 good.

21 Q Did you ever ask him the name of the fund?

22 A No, I did not.

23 Q Now, do you know whether or not Brent Saunders uses an
24 individual named William Thrush, at Merrill Lynch, to do his
25 trading?

F. Hassan - cross - Brafman

1321

1 A I was not aware of that.

2 Q Now, I'm going to ask you whether you know a couple of
3 different companies, or know whether or not Mr. Saunders
4 invested in these companies, and I will do them one at a time.
5 Okay, sir?

6 A Yes.

7 Q Do you know whether he ever invested in MannKind?

8 A I was not aware of that.

9 Q Do you know of the company?

10 A I vaguely remember that as selling an inhaled insulin.

11 Q Do you remember that, after Mr. Shkreli -- if you know,
12 complained to the FDA, MannKind sort of almost went out of
13 business?

14 A I was not aware of that.

15 Q You were aware that MannKind stock plummeted at some
16 point?

17 A I was not aware of that.

18 Q Do you know whether Mr. Saunders made a small fortune as
19 a result of his investment in MannKind at the advice of
20 Martin Shkreli?

21 A I was not aware of that.

22 Q How often would you see Brent Saunders?

23 A It depends on our degree of engagement. These days, I
24 don't see him that much because he is a very busy person,
25 running a global company, but he tries to make time. We have

F. Hassan - cross - Brafman

1322

1 a social relationship, my wife and I and he and his wife meet.
2 So, if he is in Florida where I live, we try to meet there,
3 but these days I don't see him that much because he is a very
4 busy person.

5 Q In 2011, 2012, 2013, were you seeing him on a regular
6 basis?

7 A I was seeing him more often until 2013, because he was
8 the CEO of Bausch & Lomb and I was the chairman of Bausch &
9 Lomb, but I was still residing in Florida, so I wouldn't see
10 him everyday, but I would see him more regularly at that time
11 than I see him these days.

12 Q And I think you indicated, sir, that your wife and his
13 wife and Brent and you also enjoyed a personal relationship;
14 is that correct?

15 A Yes, we had a good social relationship.

16 Q A friendship, besides being business colleagues?

17 A Yes.

18 Q Before he mentions Martin Shkreli's name to you as
19 someone who he has done well by, he doesn't ever mention any
20 of his investments with Mr. Shkreli, sir?

21 A The only time he brought it up at that time was in the
22 context of him investing in his fund, Martin's fund, and doing
23 well with that fund.

24 Q When he mentioned the name, did the name Martin Shkreli
25 ring a bell to you, sir?

F. Hassan - cross - Brafman

1323

1 A At that time, it did not.

2 Q So did you say to him who is this guy?

3 A I just heard it, listened, and that was it. That's all I
4 remember at this stage.

5 Q And there came a time when you had -- you knew that Brent
6 Saunders gave your daughter's contact information to Mr.
7 Shkreli; correct?

8 A I did find that out afterward.

9 Q Now, you trust Brent Saunders?

10 A He is very trustworthy.

11 Q He is someone who you have known to be a good, honest
12 family friend?

13 A Very good, honest family friend.

14 Q And it would be inconceivable to you, would it not, that
15 he would give your daughter's name to someone who he felt in
16 the least bit to be untrustworthy?

17 A It is unusual -- it's not to be expected that you would
18 have him bringing a person to my daughter who he didn't think
19 was worthy, but I don't know the context in which he brought
20 Mr. Shkreli to my daughter. It is conceivable that he was
21 seen -- Mr. Shkreli is an opportunity for Sarah to learn about
22 financial investing because she was fresh out of school. I
23 don't know the context of the meeting.

24 Q But since the meeting with Mr. Shkreli, did you ever talk
25 to your daughter about how she came to meet Mr. Shkreli and

F. Hassan - cross - Brafman

1324

1 what happened at that meeting?

2 A She talked to me later on, in 2011, that she had met Mr.
3 Shkreli.

4 Q And did she tell you she had met him as a result of an
5 introduction by Brent Saunders?

6 A Yes.

7 Q Did she tell you that she was going to personally invest
8 \$300,000 in Mr. Shkreli's hedge fund?

9 A I didn't know about the hedge fund investment, but I did
10 learn about the Retrophin investment later on in 2011.

11 (Continued on following page.)

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F. Hassan - Cross - Brafman

1325

1 (Continuing)

2 BY MR. BRAFMAN:

3 Q I think you testified that you really have no
4 relationship with Retrophin directly either as an investor or
5 as a director; is that correct?

6 A That is correct.

7 Q Now, you are, however, as a practical matter, partner in
8 Dynagrow; is that correct?

9 A I'm not a partner, I'm a passive investor. The manager
10 is my daughter Sarah.

11 Q And this is a private family fund that really Sarah
12 invests family money.

13 A Yes. It's a way for her to get started. Eventually, she
14 wants to be doing more of this down the road, so we thought
15 we'd give her a start.

16 Q I'm not being critical, I'm just trying to ask.

17 A Yes.

18 Q So, this fund, which had about 10 or 20 million dollars
19 under Sarah's control, was essentially your money and your
20 wife's money.

21 A Essentially our money, yes.

22 Q And at the time Sarah took over the management of the
23 fund, she had just recently got her MBA; is that correct?

24 A That is correct.

25 Q And that would be her first real opportunity to work as a

F. Hassan - Cross - Brafman

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1 manager of a fund like that; is that correct?

2 A Yes.

3 Q Now, you said on direct examination that you did not
4 exercise any formal control of Dynagrow; do you recall saying
5 that?

6 A That is correct.

7 Q But since it was your money and since the fund manager
8 was your daughter would it be a fair statement that from time
9 to time you looked in on the fund to see what Sarah and how
10 Sarah was doing?

11 A She would talk to us periodically about it. We have a
12 lot of faith in her. She had worked very hard to come through
13 college and through MBA at a young age. She's also spent time
14 at Goldman Sachs and at Merrill Lynch and is pretty
15 sophisticated. We just believed in her very much.

16 So, as a result we did not put in the controls that
17 many people might do. We just trusted her. She is a very
18 careful person, very thorough person.

19 Q In order for her to do an investment of Dynagrow money,
20 because you are a passive partner, she would have to clear the
21 trade with the compliance people at Dynagrow to make certain
22 there were no conflicts; is that correct?

23 A She was trying to learn the procedures. And at that
24 time, there was an abundance of caution around these
25 compliance clearances. So, there was a sense that wherever

F. Hassan - Cross - Brafman

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1 possible, get them cleared in a formal manner even if they're
2 in the gray zone, whether they be subject to compliance or
3 not. So, the assumption was just assume that you should get
4 the clearance.

5 Q And she tried her best to follow that procedure.

6 A She tried her best to do that.

7 Q And you're familiar with the e-mail traffic between Sarah
8 and the fund, for example, when she was about to invest in
9 Retrophin on behalf of the Dynagrow and she got clearance; is
10 that correct?

11 A I believe so.

12 Q So, did Mr. Saunders ever tell you whether or not he
13 invested in Retrophin?

14 A No.

15 Q You have no knowledge today whether he did or he didn't?

16 A No knowledge.

17 Q And how about Mr. Banta, do you know whether he invested
18 in Retrophin?

19 A No knowledge.

20 Q And how about Mr. Bertolini, do you know if he invested
21 in Retrophin?

22 A No knowledge.

23 Q Would there be a reason if Mr. Saunders had invested in
24 Retrophin to keep that information from you, that you can
25 imagine?

F. Hassan - Cross - Brafman

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1 A I think generally that would be his business and he
2 wouldn't need to share that with me.

3 Q Now, both in 2011, 2012, there was a conference by JP
4 Morgan, sponsored by JP Morgan, in San Francisco?

5 A So, every year there was a conference in January of every
6 year and, yes, there was one in 2012 as well in San Francisco.

7 Q Do you know an individual named Vavek, V-A-V-E-K,
8 Ramaswamy, R-A-M-A-S-W-A-M-Y?

9 A Yes, I know Vavek, yes. Investor person.

10 Q And he's a biotech giant at the age of 29; would that be
11 a fair statement?

12 A He's a smart person and has done a very good job with his
13 small company. I don't know where he's at right now but he's
14 a very smart person.

15 Q How did you come to know him as a smart person?

16 A I believe he was introduced to me by Mr. Banta.

17 Q Now, do you know whether or not Mr. Ramaswamy is or is
18 not one of Retrophin's largest investors?

19 A I was not aware of that.

20 Q Now, did there come a time when your daughter Sarah asked
21 if you would set out some time to possibly meet with Martin
22 Shkreli at the conference at JP Morgan in 2011?

23 A Yes, I was there already and I heard from Sarah that she
24 wanted me to meet Mr. Shkreli and I made the time to make it
25 happen.

F. Hassan - Cross - Brafman

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1 Q And did you do that?

2 A Yes, sir.

3 Q I think what you said on direct examination when
4 questioned that you did it for two reasons: One was to
5 accommodate your daughter because she's your daughter.

6 A Re.

7 Q And, two, you were kind of curious to meet Martin
8 Shkreli; isn't that true?

9 MS. KASULIS: Objection, your Honor.

10 THE COURT: Sustained.

11 Q Why did you agree? You said you had two reasons for the
12 meeting.

13 What was the second reason, besides what Sarah asked
14 you?

15 A The main reason was Sarah asked me to see him. I was
16 aware that Mr. Saunders thought highly of his fund
17 performance.

18 Q Now, I think you testified on direct examination that you
19 really don't remember the meeting.

20 A No, I don't.

21 Q You don't deny it happened?

22 A I don't deny it happened.

23 Q But you don't remember what was discussed?

24 A I don't remember.

25 Q Now, when you were at these meetings, because you're in

F. Hassan - Cross - Brafman

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1 such demand, is it common for your office or administrative
2 assistant, for example, Deborah Noel, to prepare a daily
3 calendar for you of where your meetings are going to be and
4 when they're going to be?

5 A Yes, sir.

6 MR. BRAFMAN: May I approach, your Honor?

7 THE COURT: Yes.

8 Q I'm showing you what's marked as Defendant's Exhibit
9 1200, a two-page document, and ask if you can look at the top
10 page and if you could look at the sheet behind it, sir.

11 A Thank you.

12 Q Do you recognize it, sir?

13 A I recognize it, yes. It looks like my calendar.

14 Q And this is a document, a two-page document, that you
15 recognize as reminder prepared by your administrative
16 assistant about the time and place of your meetings, and then
17 attached to it is your full calendar date for January 2011; is
18 that correct?

19 A Yes.

20 Q And these are prepared by your office in the ordinary
21 course of business not just specifically for this meeting,
22 correct?

23 A Yes.

24 MR. BRAFMAN: Your Honor, I offer the document into
25 evidence.

F. Hassan - Cross - Brafman

1331

1 MS. KASULIS: No objection.

2 THE COURT: We will admit Defendant's Exhibit 1200
3 in evidence without objection.

4 (Defendant's Exhibit 1200 so marked.)

5 MR. BRAFMAN: If we could put this up on the screen.

6 (Exhibit published to the jury.)

7 Q Now, on the top of the meeting Deborah Noel, is that your
8 administrative assistant in January 2011?

9 A She was helping me at that time. But the administrative
10 assistant I had was Johannah Olsher.

11 Q She was one of your employees, if you will?

12 A Yes.

13 Q And it's not uncommon during that period for her to
14 prepare an e-mail like this on your behalf, right?

15 A It's not uncommon.

16 Q The subject reads: Meet Martin Shkreli, MSMB Capital,
17 per SH -- that I assume is Sarah Hassan -- in The Cliff Hotel
18 at the concierge desk; do you see that?

19 A Yes.

20 Q So, this confirms that not only was the meeting at
21 Sarah's request, but the subject of the meeting was going to
22 be MSMB Capital; is that correct?

23 A This only says MSMB Capital. It doesn't say that the
24 subject was MSMB Capital.

25 Q If you look to the left, it's on the line that reads

F. Hassan - Cross - Brafman

1332

1 "subject;" am I right?

2 On the front page. The subject line says MSMB
3 Capital, correct?

4 A It could be defining what he did as opposed to wanting to
5 talk to me about MSMB Capital.

6 Q I understand. Now let's look at the actual calendar, and
7 we'll hone in, if we can, on the 4:15 half-hour block. It
8 says: Meet Martin Shkreli, MSMB Capital, per Sarah Hassan,
9 telephone number, in The Cliff Hotel at the concierge desk.

10 And that relates to the half-hour meeting you had
11 with Mr. Shkreli on that date; is that correct?

12 A That is correct.

13 Q So, when you say you have no recollection of the
14 conversation, you're aware, are you not, that shortly before
15 this meeting, your daughter put \$300,000 into MSMB Capital; do
16 you know that?

17 A I was not aware of that.

18 Q And when she asked you to meet Martin Shkreli for a
19 half-hour in the hotel and she identified him from MSMB
20 Capital, you did not know that your daughter had put \$300,000
21 which according to her was 30 percent of her personal net
22 worth, into MSMB Capital?

23 A I was not aware of that.

24 Q Why did she want you to meet Martin Shkreli?

25 A I don't know. I assume that he was teaching her how to

F. Hassan - Cross - Brafman

1333

1 manage a portfolio. But I was there to help her. And I'd
2 heard about Martin, so I agreed to the meeting.

3 Q So, you knew that Brent Saunders had done well with
4 Martin, correct?

5 A That is correct.

6 Q And you new that Brent Saunders had introduced Sarah to
7 Martin, correct?

8 A Yes.

9 Q And shortly after the introduction to Martin, she asked
10 you to meet with Martin Shkreli and the subject line is MSMB
11 Capital, correct?

12 MS. KASULIS: Objection, your Honor.

13 THE COURT: Sustained.

14 Q Do you recall Mr. Shkreli explaining anything about MSMB
15 Capital to you?

16 A No, I don't.

17 Q No recollection whatsoever?

18 A No recollection.

19 Q And after the meeting, did you ever talk to Sarah
20 again -- shortly after the meeting, did you report back to
21 Sarah that you had met Mr. Shkreli?

22 A I don't remember doing that.

23 Q Now, look at the other items on the calendar.

24 A Yes, sir.

25 Q Do you remember any of those meetings?

F. Hassan - Cross - Brafman

1334

1 A Yes, these are people I know, so I would customarily meet
2 them. Exactly what happened inside these meetings, I don't
3 remember.

4 Q Okay. You can put that exhibit aside, sir. Thank you.

5 MR. BRAFMAN: Give me just one moment, your Honor.

6 (Pause in proceedings.)

7 Q Now, did you ever have a telephone conversation in May of
8 2011 with Ken Banta in which you discussed with him Martin
9 Shkreli's venture?

10 A I don't remember that.

11 MR. BRAFMAN: I'm handing the witness Defendant's --
12 marked for identification DX 1201.

13 THE WITNESS: Thank you.

14 MR. BRAFMAN: You're welcome.

15 Q Can you look at that document, sir?

16 A Yes.

17 Q And you recognize this document as a document that is
18 similar to the first one as an e-mail from Deborah Noel
19 reminding you about either a meeting or a conference call?

20 A It does. It's similar to the previous one. It's a
21 calendar.

22 Q And it's in the ordinary course of your business
23 operation for you to get materials like this; is that correct?

24 A Yes.

25 MR. BRAFMAN: Your Honor, I move it into evidence.

F. Hassan - Cross - Brafman

1335

1 MS. KASULIS: No objection.

2 THE COURT: We will receive Defendant's Exhibit 1201
3 into evidence without objection.

4 (Defendant's Exhibit 1201 so marked.)

5 Q Mr. Hassan, I'm going to put it up on the screen and ask
6 you to look at it, sir, and tell me if you're able to see it
7 once I adjust it.

8 (Exhibit published to the jury.)

9 Q Can you read it from the screen?

10 A Yes, I can. Do you want me to read it?

11 Q No, I'm going to read it to you, I want to make sure you
12 can see it?

13 A Yes, I can see it.

14 Q This document, since it's in evidence, we can read it.

15 Subject: 9:45 a.m. call with Ken Banta,
16 585-354-0826, re Martin Shkreli's venture. J0 to place call.

17 Who is J0?

18 A That's Johannah Olsher. And Debbie Noel used to Johannah
19 Olsher.

20 Q So, "J0" is your administrative assistant at the time; is
21 that correct?

22 A That is.

23 Q The date is 5/10/2011, and the meeting organizer is
24 listed -- meeting status, meeting organizer. You're listed as
25 the organizer. And the subject is to discuss with Ken Banta

F. Hassan - Cross - Brafman

1336

1 Martin Shkreli's venture.

2 Do you know what was involved in that call?

3 A I don't remember that call at this stage.

4 Q Now, do you know what date your daughter actually made
5 the investment into Retrophin?

6 A No.

7 Q Do you know that this call is one month after the
8 Dynagrow investment? Would you accept my representation?

9 A Yes.

10 Q Now, Dynagrow, although you were only a passive partner,
11 it was your money that was in there; your money and your
12 wife's money, right?

13 A Primary -- yes, both our money and a small amount of
14 Sarah's money, all three.

15 Q It was a family fund.

16 A It was a family fund.

17 Q So, what venture were you talking to Ken Banta about a
18 month after Dynagrow, your money, was some of it put unto
19 Retrophin?

20 A I don't know.

21 Q Isn't it true, sir, that you wanted Ken Banta to give you
22 an update about Martin Shkreli's company?

23 A I'm not sure if I initiated this call.

24 Q Well, it says that you are the organizer. I don't know
25 whether that means you initiated it, but your administrative

F. Hassan - Cross - Brafman

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1 assistant initiated the call.

2 A It's quite common that people who wanted to talk to me
3 would get a time set with my administrative assistant and then
4 I would talk to them.

5 Q I understand that. But Ken Banta was certainly not a
6 stranger at the time, right?

7 A He was not. But, again, he probably would have organized
8 a call with me.

9 Q Okay.

10 A And I know that this is thing calls it me being the
11 organizer, but customarily he would have set this time up with
12 my assistant for me to talk to him.

13 Q Let's give you the benefit of the doubt or let's just
14 assume Ken Banta organized the call, okay?

15 A Yes.

16 Q What was your understanding going into the call about
17 what Martin Shkreli's venture was that he wanted to talk to
18 you about?

19 A I don't remember.

20 Q But when you have a call that you're about to participate
21 in, isn't it helpful before you get on the phone to know what
22 they're going to be talking about?

23 A It's possible that he wanted to talk to me about
24 something and he didn't want to send any advance
25 documentation. I don't know.

F. Hassan - Cross - Brafman

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1 Q And you have no recollection whatsoever about what was
2 being discussed on the call.

3 A No.

4 Q You don't doubt that the call took place, though,
5 correct?

6 A I don't doubt that, no.

7 Q Now, I think you testified that you never acted as a
8 reference for Martin Shkreli; is that correct?

9 A That's what I said, yes.

10 Q That word "reference" is a fairly broad word; isn't that
11 correct?

12 A Yeah, it means somebody who would be --

13 Q Say something nice about you, if called?

14 A Generally, if you're applying for a job, you are a
15 reference if you say yes, this person is worth giving the job
16 to. That's the context.

17 Q It doesn't take on a legal meaning. It means it's
18 social, meaning you can list someone as a reference on your
19 resume and hope that if they call you, you'll say something
20 nice about them.

21 A That is correct. You would assume that the reference
22 that's being given would know something about you.

23 Q Whether or not you were ever a formal reference for
24 Mr. Shkreli, there were times when you publicly did say nice
25 things about him, both in e-mails and verbally, to other

F. Hassan - Cross - Brafman

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1 people; isn't that correct?

2 A I don't remember the public comments. I do remember
3 encouraging him in e-mails, but I don't remember anything
4 else.

5 Q We'll get to it in a minute.

6 A Sure.

7 Q Did you ever discuss with Martin Shkreli or Brent
8 Saunders or your daughter or Mr. Bertolini or Mr. Kessler the
9 potential merger of Retrophin with a company called Telik,
10 T-E-L-I-K?

11 A I don't remember.

12 Q Do you know what Telik is?

13 A I don't know much about it. The name rings a bell, but I
14 don't know much else.

15 Q When it rings a bell, does it ring a bell as a
16 pharmaceutical company?

17 A Yes.

18 Q Now, did you ever have a meeting with Martin Shkreli and
19 Michael Wick, the CEO at Telik, in order to discuss the
20 possible merger of Retrophin and Telik?

21 A I don't remember that.

22 Q I'd like to show you what's marked for identification as
23 DX 1202, which, again, is a calendar entry.

24 MR. BRAFMAN: I'll hand it to the witness.

25 Does your Honor have a copy?

F. Hassan - Cross - Brafman

1340

1 THE COURT: I do.

2 Do you want mine? Just return it.

3 MR. BRAFMAN: Thank you, your Honor.

4 THE COURT: You're welcome.

5 Q Now, the front page is, again, a cover page which bears
6 Deborah Noel's name on the top, and it appears to be similar
7 to the other calendar entries that schedule meetings; is that
8 correct?

9 A Yes.

10 Q Now in January of 2012, were you once again at the JP
11 Morgan health conference?

12 A Yes.

13 Q And the second page of the document is a copy of your
14 calendar for January 10; is that correct?

15 A Yes.

16 MR. BRAFMAN: I'd offer it into evidence, your
17 Honor.

18 MS. KASULIS: No objection.

19 THE COURT: We will accept into evidence Defense
20 Exhibit 1202 without objection.

21 (Defendant's Exhibit 1202 so marked.)

22 (Exhibit published to the jury.)

23 Q Do you have the document, sir?

24 A Yes, sir.

25 Q It's also on the screen. I hope the jurors can see it.

F. Hassan - Cross - Brafman

1341

1 So this document, the subject is, meeting with
2 Martin Shkreli and the telephone number is 646-217-2783, and
3 Michael Wick, CEO Telik, at Oak Room.

4 Is the oak room one of the meeting rooms in the
5 hotel where the JP Morgan conference was held?

6 A Yes.

7 Q And the time of the meeting is going to be 8:30 to 9:30;
8 correct?

9 A Yes.

10 Q And, again, the meeting organizer is listed as Fred
11 Hassan, and this was prepared by someone in your office,
12 correct, sir?

13 A Yes.

14 Q Now, the next page shows -- and I'm going to circle this
15 copy in red -- that the slot for 8:30 a.m., there is a meeting
16 scheduled with Martin Shkreli, and I assume that's the
17 telephone number for Mr. Shkreli, and the meeting is with
18 Michael Wick, CEO Telik, at Oak Room.

19 Do you recollect this meeting at all?

20 A No.

21 Q None whatsoever?

22 A No.

23 Q Now, do you know -- well, you don't know what was
24 discussed at the meeting, you don't know who participated in
25 the meeting?

F. Hassan - Cross - Brafman

1342

1 A No.

2 Q Would you know if Mr. Banta or Mr. Saunders were at that
3 meeting as well?

4 A No, I don't know who was there.

5 Q Were Mr. Saunders and Mr. Banta at the conference with
6 you?

7 A Yes -- no, I don't know about Mr. Banta. Mr. Saunders
8 was there.

9 Q And you don't know whether he was at the meeting?

10 A At this meeting? No idea.

11 Q If you look at the next entry right underneath, the
12 meeting with Mr. Wick ends at 9:30 a.m. and Mr. Saunders was
13 actually one of the people presenting at the conference that
14 day, right?

15 A Yes.

16 Q So a half-hour after your meeting with Mr. Shkreli,
17 Mr. Saunders is actually one of the people speaking at the
18 conference.

19 A Yes.

20 Q But you have no recollection of meeting Mr. Wick at all?

21 A No.

22 Q Do you know who organized this meeting?

23 A I don't know.

24 Q Isn't it a fact that it was your daughter, again, who
25 asked you to set up the meeting for Mr. Shkreli?

F. Hassan - Cross - Brafman

1343

1 A The second meeting?

2 Q Second meeting.

3 A I don't remember.

4 Q Do you remember whether -- I'm going to show you this for
5 identification only?

6 MR. BRAFMAN: Not offering it into evidence.

7 Q DX 1225. Now, just looking at the document, not reading
8 from it, have you ever seen this e-mail before?

9 A May I just see it for one second?

10 Q Yes, sir.

11 A Thank you.

12 (Pause in proceedings.)

13 A No, I don't remember seeing this.

14 Q And it doesn't refresh your recollection that the meeting
15 with Mr. Wick at the conference was going to be about a
16 potential merger between Retrophin and Telik?

17 A No, I don't remember the meeting.

18 Q Now, when did you learn that Sarah had invested in
19 Retrophin?

20 A Sometime after she had done the investment she mentioned
21 that to me.

22 Q Didn't you get a note from Brent Saunders before her
23 investment that she had been cleared by Warburg Pincus for the
24 investment?

25 A You may want to rephrase the question because I think you

F. Hassan - Cross - Brafman

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1 meant somebody else other than Brent Saunders.

2 Q No, I'm asking you accurately. I'm using Brent Saunders.

3 Didn't you get an e-mail from Brent Saunders in
4 April of 2011 telling you personally, through this e-mail,
5 that Sarah had been cleared to invest in Retrophin?

6 A I don't remember that e-mail.

7 Q Let me show you a document marked DX 1211.

8 A This e-mail exchange occurred, yes. I don't remember
9 this one at this time.

10 Q But you don't deny that the e-mail was sent from Brent
11 Saunders to you and that you responded to Brent?

12 A I don't dispute that.

13 Q And you recognize this as an e-mail that was addressed to
14 you and then you addressed it to Brent; is that correct?

15 A Yes.

16 MR. BRAFMAN: Your Honor, I would offer Defendant's
17 Exhibit DX 1211.

18 MS. KASULIS: Objection, your Honor.

19 THE COURT: Let's briefly speak at sidebar about the
20 document DX 1211.

21

22 (Continued on next page.)

23

24

25

F. Hassan - Cross - Brafman

1345

1 (The following occurred at sidebar.)

2 MR. BRAFMAN: Your Honor, do you have a copy of the
3 e-mail?

4 THE COURT: Yes, I do.

5 MR. BRAFMAN: This e-mail substantially contradicts
6 his testimony; I mean directly contradicts his testimony that
7 he learned of the investment after it was made. It's
8 absolutely clear that he learned of it before it was made.
9 So, because it's -- the investment comes after this e-mail
10 when she's cleared by Dynagrow.

11 THE COURT: I thought the investment was in January.

12 MR. BRAFMAN: That's MSMB.

13 THE COURT: This is for the Dynagrow investment.

14 MR. BRAFMAN: Yes, ma'am.

15 So, this is clearly inconsistent with the testimony
16 he just gave in terms of when he learned of her investment.

17 THE COURT: Okay. I thought he was talking about
18 her personal investment.

19 MR. BRAFMAN: I'll clear that up. That's Retrophin.

20 But this is also something that he responds to. And
21 it also confirms that he also knew about Brent Saunders'
22 investment. So, under 806, this goes in as a prior
23 inconsistent statement even if it has hearsay in it.

24 THE COURT: All right. But I think what you need to
25 do is clarify the record about when he learned about his

F. Hassan - Cross - Brafman

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1 daughter's personal investment and when he learned about
2 Dynagrow's investment and --

3 MR. BRAFMAN: I will. And this clearly relates to
4 Retrophin and I'm going to make it clear on the record.

5 THE COURT: Okay.

6 MS. KASULIS: As long as he establishes the
7 predicate.

8 THE COURT: Because I was confused.

9 MS. KASULIS: I was as well.

10 MR. BRAFMAN: Thank you.

11 THE COURT: You'll have to clarify which entity and
12 which fund is being invested, okay?

13 MR. BRAFMAN: Yes.

14 MS. KASULIS: And who was then investing.

15

16 (Sidebar ends.)

17 (Continued on next page.)

18

19

20

21

22

23

24

25

Hassan - cross - Brafman

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1 BY MR. BRAFMAN: (Continuing)

2 Q If you could put the document down, sir, and just rely on
3 what you remember because you already testified to what you
4 remembered before I showed you the document. I just want to
5 made absolutely clear we're all on the same page.

6 A Sure.

7 Q There came a time is where you learned that your daughter
8 invested in Retrophin; is that correct?

9 A Yes.

10 Q And I believe you testified just a few minutes ago that
11 you learned about her investment after she made the
12 investment; correct?

13 A That's my recollection.

14 Q After Dynagrow made the investment in Retrophin; correct?

15 A I didn't know the name Retrophin until a lot later.

16 Q A lot later, okay. And you testified also that you
17 didn't know that Brent Saunders had invested in Retrophin; is
18 that correct?

19 A At some point -- you mean in terms of in -- at that time?
20 I was not -- I don't remember that at this date.

21 Q And with respect to Bob Bertolini, do you know if he
22 invested in Retrophin at that time in April of 2011?

23 A I don't know.

24 Q And how about Tom Koestler?

25 A I don't know.

Hassan - cross - Brafman

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1 MR. BRAFMAN: Your Honor, I would offer DX 1211 in
2 evidence.

3 THE COURT: Did you have an objection?

4 MS. KASULIS: Your Honor, I believe he said he
5 didn't know any of that.

6 MR. BRAFMAN: Your Honor, I think they stated their
7 objection.

8 THE COURT: Do you want to refresh his recollection
9 with this document and see if it will help him refresh?

10 BY MR. BRAFMAN:

11 Q Look at the document, DX 1211.

12 A Yes, sir.

13 Q You indicated that you recognized the document including
14 an e-mail on the bottom from Mr. Shkreli to Mr. Saunders and
15 an e-mail from Brent Saunders to Tom, Fred and Bob and then a
16 response from you to this e-mail; correct?

17 A Yes.

18 Q Does this e-mail refresh your recollection that you
19 learned about your daughter's investment through Dynagrow into
20 Retrophin before she actually made the investment?

21 A No.

22 Q And does it refresh your recollection that Mr. Saunders,
23 Bertolini and Koestler all invested in Retrophin in 2011?

24 A I don't remember that.

25 MR. BRAFMAN: I offer it into evidence, Your Honor.

Hassan - cross - Brafman

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1 THE COURT: I'll admit Defendant's 1211 in evidence
2 over the Government's objection.

3 (Defendant's Exhibit 1211 received in evidence.)

4 THE COURT: You may publish it.

5 MR. BRAFMAN: Instead of circling it in red, I'm
6 going to point on the highlighted section anyway.

7 THE COURT: That's fine.

8 (Exhibit published.)

9 Q I'd like to go through the e-mail with you, Mr. Hassan.
10 If you can look at the copy of your screen, sir, this is
11 dated -- this is an e-mail from you, Fred Hassan, to Brent
12 Saunders, Tom Koestler, Bob Bertolini concerning Retrophin
13 subscription details. Do you see that?

14 A Yes.

15 Q And we'll start from the bottom up, if we can, where you
16 have an e-mail to Brent Saunders on Tuesday, April 19th. "An
17 individualized private placement memorandum," PPM "has to be
18 provided by myself. Contact Martin@msmbcapital.com. A copy
19 of the rest of the documents is provided here. You may
20 forward your individualized PPM at your own free will."

21 Do you see that?

22 A Yes.

23 Q And you understand that when someone invests in a hedge
24 fund, they are generally given a private placement memorandum
25 if it's to be investing in a company startup or an IPO;

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1 correct?

2 A I know there are some documents. PPM, I'm not that close
3 to, but yeah generally there are documents.

4 Q Okay. I'm going to give to you the e-mail from Brent to
5 Tom, Fred and Bob. And Tom we've agreed is Tom Koestler;
6 correct?

7 A Yes.

8 Q And what is Tom Koestler's relationship to you at the
9 time?

10 A He used to be the head of research and development at
11 Schering-Plough.

12 Q And that's a pretty responsible position; correct?

13 A Yes.

14 Q And as head of research and development at
15 Schering-Plough, part of what he does is he vets new
16 companies; correct?

17 A Yes.

18 Q And new research?

19 A Yes.

20 Q Is he a doctor?

21 A No, he's not.

22 Q But he has scientific training and background?

23 A Yes.

24 Q And Bob Bertolini at the time is -- who is he to you at
25 that time?

Hassan - cross - Brafman

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1 A He used to be the chief financial officer of
2 Schering-Plough.

3 Q And Fred Hassan is you and you are chairman of the board;
4 correct?

5 A Of Schering-Plough I was the CEO also, yeah, the chief
6 executive officer.

7 Q And who was Brent Saunders?

8 A Brent Saunders did different jobs at Schering-Plough, but
9 his last job was running the consumer healthcare business.

10 Q So the four people who are either writing the e-mail or
11 getting the e-mail are pretty heavy-duty executives in the
12 healthcare industry, correct, at that time?

13 A At that time they were not in any particular large
14 company, but they were quite knowledgeable about the business,
15 yes.

16 Q And the e-mail reads as follows: "Dear Tom," who is
17 Bertolini, Fred who is you -- sorry. Tom is Koestler, Fred is
18 you, Bob is Bertolini and the e-mail reads as follows: "I am
19 writing to provide details regarding the investment in
20 Retrophin which is working on a treatment for muscular
21 dystrophy. This is a high-risk investment. However, I
22 believe Tom, Bob and I are all in agreement that it is a good
23 investment from both a business perspective and our ability to
24 help fund a treatment for this horrible disease. If you all
25 agree, I need to provide you contact information to Martin's

Hassan - cross - Brafman

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1 lawyer so he can create a specific subscription document for
2 you. Below are the versions for me. I plan to invest
3 \$200,000. We have the option of putting it anywhere from zero
4 dollars to \$250,000 each. Please confirm that you are okay
5 with me sending your e-mail to Martin."

6 Did I read it correctly?

7 A Yes.

8 Q And it's signed "Brent" who you understood to be Brent
9 Saunders?

10 A Yes.

11 Q And then you write back. You write back at the top the
12 first section, "Dear Brent: Bess has cleared the investment
13 in the muscular dystrophy project. Sarah will be proceeding
14 with it early next week." Signed "Fred."

15 Does that mean that Bess is a compliance person at
16 Dynagrow?

17 A No, Bess was the person at Warburg Pincus and she would
18 ordinarily have to be okay with this. So if I'm
19 reconstructing all of this, Sarah may have tried to clear this
20 project with Bess and then at some point informed me to answer
21 Brent in this manner.

22 Q Okay. Just so -- I think I misspoke, Bess works for
23 Warburg Pincus not Dynagrow; correct?

24 A For Warburg Pincus, yes.

25 Q And Warburg Pincus has a compliance department which

Hassan - cross - Brafman

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1 reviews investments from you or Dynagrow, since you're a
2 passive investor, to make certain there are no conflicts;
3 correct?

4 A Yes. Rather than saying compliance department I would
5 say compliance procedure.

6 Q Okay. So the compliance procedure means when a new
7 investment is contemplated, someone at Warburg Pincus needs to
8 look at the investment; correct?

9 A Yes.

10 Q Understand the nature of the investment?

11 A Yes.

12 Q Understand who the people are who are going to be
13 investing?

14 A Yes.

15 Q To determine whether or not there is any conflict with
16 anything that Warburg Pincus might be doing either of a
17 similar nature or a conflicting nature; correct?

18 A Yes.

19 Q Because if Retrophin was going to be a competing company
20 with a company Warburg Pincus, for example, was in
21 underwriting, you would maybe have a conflict investing in the
22 competition; correct?

23 A Yes, yes.

24 Q And that's why it was very important for someone at
25 Warburg Pincus to review these investments?

Hassan - cross - Brafman

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1 A Yes, it was a clearance that Sarah felt -- I'm speaking
2 for Sarah. She was here yesterday, but I'm assuming she
3 wanted this clearance.

4 Q I'm not being critical. I think it's a good thing to do.
5 Does this in any way refresh your recollection that all of the
6 chief people around you, and when I say "the chief people" a
7 lot of the major executives that traveled with you from
8 company to company are agreeing that this is a good investment
9 from a business perspective and it may also help fund
10 treatment for a horrible disease?

11 MS. KASULIS: Objection.

12 THE COURT: Sustained.

13 Will you rephrase, Mr. Brafman?

14 MR. BRAFMAN: Yes.

15 BY MR. BRAFMAN:

16 Q Does this refresh your recollection that Brent Saunders
17 whom you've known for years as an important business colleague
18 has already invested in this company or going to?

19 A I don't remember the details of this note, but at that
20 time, I was aware that my former colleagues in Schering-Plough
21 were quite high on Mr. Shkreli in general.

22 Q And quite high, according to this e-mail, on this new
23 company?

24 A I don't know the details of this company at that time.

25 Q But it clearly says that, does it not?

Hassan - cross - Brafman

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1 A That's what the e-mail says, yes.

2 Q And your response isn't anything about the quality of the
3 investment. You just confirmed that someone at Warburg Pincus
4 has cleared the investment; correct?

5 A Yes. So if I were to reconstruct this, this is a way to
6 say that there is no need to send me anymore e-mails on this,
7 essentially.

8 Q Okay. That -- I'm only in it through Dynagrow which is
9 your daughter's fund managing family money.

10 A My daughter is the manager and she is proceeding with
11 this early next week.

12 Q How much of the 10 or \$20 million in Dynagrow is yours
13 and your wife's?

14 A A very large percentage, over 90 percent.

15 Q 90 percent?

16 A Yes.

17 Q So a fund that you and your wife own is essentially worth
18 90 percent of either 10 or \$20 million is investing in this
19 company and you now know that a lot of your business
20 colleagues are doing it as well; correct?

21 MS. KASULIS: Objection.

22 A All I was staying was that in this e-mail that this is
23 really Sarah's province and she had already proceeded to make
24 her -- I'm not -- I'm not discussing this investment in any
25 way as a private investor. This is really Sarah's project and

Hassan - cross - Brafman

1356

1 that's the context of this e-mail.

2 Q Do you know who Douglas Madden is? It's not on that
3 e-mail. Do you know who Douglas Madden is?

4 A He is the head of compliance at Warburg. He's at least
5 an important compliance officer at Warburg.

6 Q And would he be in the chain, if you will, of people who
7 might have to clear something for Warburg Pincus and allow you
8 to invest?

9 A There were different procedures at different times. At
10 some point he definitely was part of the chain. I don't know
11 what procedures were in place at that time in 2011.

12 Q Now, I think you told us that last time you believed you
13 spoke to Martin Shkreli was at the second J.P. Morgan
14 conference in 2012; is that correct?

15 MS. KASULIS: Objection, Your Honor.

16 THE COURT: Sustained.

17 MR. BRAFMAN: Withdrawn.

18 BY MR. BRAFMAN:

19 Q When was the last time you believe you spoke with Martin
20 Shkreli?

21 A My recollection is in 2011 when I met him. This 2012
22 meeting I don't remember although you showed it to me in the
23 calendar.

24 Q It didn't refresh your recollection that you had a
25 one-hour meeting with Mr. Shkreli, did it?

Hassan - cross - Brafman

1357

1 A No, it did not.

2 Q Or a Mr. Wilk (phonetic)?

3 A Correct.

4 Q When you met with Martin Shkreli, I think you
5 characterized him as being somewhat intimidated in your
6 presence?

7 A It was the first meeting and obviously he was happy that
8 he got to see me and he just was very respectful.

9 Q Did he appear to be excited?

10 A I didn't see the excitement. I didn't know Martin
11 Shkreli very well, but it was clear that he was very
12 respectful and it was a pleasant recollection of what
13 happened. He seemed to be a kind of homework kind of person.

14 Q Overt?

15 A Homework.

16 Q Someone who studied hard, knowledgeable?

17 A Who studied hard, yes.

18 Q And what about that brief meeting led you to conclude
19 that; that he was someone who studied hard? How did he
20 impress you in that way in that short period of time?

21 A I think Brent might have mentioned that to me ahead of
22 the meeting so maybe I just said to myself that this person
23 looks like the type of person who studies a lot.

24 Q Is it a fair characterization that he was jumping out of
25 his skin to meet you?

Hassan - cross - Brafman

1358

1 A He was not that expressive at the meeting.

2 Q Was he expressive enough for you to conclude on your own
3 in addition to what Brent Saunders said that he is, like,
4 super smart?

5 A I could not conclude that based on that short meeting.

6 Q Didn't Brent Saunders tell you that he was a genius?

7 A Brent said that he got a good return on his investment in
8 the fund.

9 Q Now, do you remember whether in March of 2012, Ken Banta
10 talked to you about an individual named Tom Haverty?

11 A I don't remember that.

12 Q And are you familiar with a company named Scopia Capital?

13 A No, I'm not.

14 Q Did you have any understanding as to whether or not Ken
15 was asking your opinion with Scopia merging with Retrophin?

16 A I don't remember.

17 Q No recollection whatsoever?

18 A No.

19 Q I'm going to show you marked for identification only --
20 it's marked R018664 as a -- this is not in evidence. The
21 Bates number is R018864.

22 MS. KASULIS: The exhibit number?

23 MR. BRAFMAN: 1038.

24 MS. KASULIS: It's marked for identification as a
25 Government's sticker. I'm not offering it in evidence. I

Hassan - cross - Brafman

1359

1 just want to hand it to the witness.

2 THE COURT: You're handing him Government 1038?

3 MR. BRAFMAN: Yes, Your Honor.

4 THE COURT: Thank you.

5 BY MR. BRAFMAN:

6 Q If you could read that to yourself, sir.

7 A Yes, thank you.

8 Q Have you had a chance to read it, sir?

9 A Yes.

10 Q Does it refresh your recollection that on March 20th of
11 2012 Mr. Shkreli wrote to Mr. Banta who then wrote to you
12 about a possible merger with Retrophin?

13 MS. KASULIS: Objection, Your Honor.

14 THE COURT: I'm going to overrule the objection.

15 MS. KASULIS: Your Honor, let's have a brief
16 sidebar.

17 MR. BRAFMAN: Your Honor, I just asked if it
18 refreshed his recollection. I wasn't going to offer it.

19 THE COURT: We'll have a sidebar. I think there's
20 something else troubling the Government right now.

21 (Continued on next page.)

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Sidebar

1360

1 (The following occurred in sidebar.)

2 MR. BRAFMAN: Scopia is investing and I said merging
3 and I misspoke.

4 MS. KASULIS: That was our objection, Your Honor.

5 MR. BRAFMAN: Is there going to be an objection to
6 this being offered in evidence?

7 MS. KASULIS: We have to see what is testified to.

8 MR. BRAFMAN: I misspoke.

9 (Continued on next page.)

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Hassan - cross - Brafman

1361

1 (Continuing.)

2 THE COURT: Mr. Brafman will withdrew that last
3 question and rephrase.

4 MR. BRAFMAN: Your Honor, I misspoke.

5 BY MR. BRAFMAN:

6 Q Mr. Hassan, you read this document that's marked
7 Government 1038 that's not yet in evidence?

8 A I just read it, yes, sir.

9 Q And does it refresh your recollection that Tom Koestler
10 and Ken Banta wanted your input on a potential investment into
11 Retrophin by Scopia Capital?

12 A That's what the document says here.

13 Q But I'm asking you, sir, do you remember this document at
14 the time it came to you?

15 A I don't.

16 Q Do you doubt the authenticity of this document?

17 A I don't know how to confirm that it was received by me.

18 Q I think the Government will stipulate to its
19 authenticity. I'm just trying to discuss admissibility. Am I
20 right? It's marked as a government exhibit.

21 A I haven't seen this before or at least I don't remember
22 seeing it before.

23 Q But it doesn't refresh your recollection; is that
24 correct?

25 A It does not refresh my recollection.

Hassan - cross - Brafman

1362

1 MR. BRAFMAN: Your Honor, without an objection as to
2 authenticity, I'd like to offer it in evidence and I'll change
3 the marking from Government Exhibit 1038 to Defendant's
4 Exhibit 1228.

5 MS. KASULIS: Objection.

6 THE COURT: Let's have another sidebar. Excuse me.

7 (Continued on next page.)

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Sidebar

1363

1 (The following occurred at sidebar.)

2 MS. KASULIS: Your Honor, our objection is that he
3 is just saying it doesn't refresh his recollection. That's
4 not a basis on admit the document under the rules of evidence.

5 MR. BRAFMAN: Judge, when a witness who in my view,
6 and I don't say this disrespectfully, clearly has a selective
7 memory, if you will, and the document will never refresh his
8 recollection, there is no question as to its authenticity.

9 That's been stipulated by the parties and it is his
10 e-mail to Ken Banta who is already described as a close
11 business associate. That's how they correspond.

12 THE COURT: These are Mr. Shkreli's e-mails to Ken
13 Banta who then writes to --

14 MR. BRAFMAN: He sends it to Mr. Fred Hassan. I'll
15 redact Mr. Shkreli's --

16 THE COURT: This is not Mr. Hassan's e-mail. He
17 just doesn't remember this e-mail.

18 MR. BRAFMAN: But it's important for me to show that
19 whenever it comes to something involving Mr. Shkreli, I
20 believe in 2017 it's not great for the pharmaceutical legend
21 to be associated so deeply with Mr. Shkreli and that is a fair
22 argument from the way he has selectively not remembered
23 meetings about mergers. They can argue he had a million
24 meetings, I get it, but I think I can probe him on this.

25 MS. KASULIS: Your Honor, the appropriate way in

Sidebar

1364

1 which to make the point in which Mr. Brafman is making would
2 be to call Ken Banta to say I spoke --

3 MR. BRAFMAN: He's on your witness list.

4 MS. KASULIS: He's on yours too. That's my point if
5 you want to make that point make it through Mr. Banta.

6 MR. BRAFMAN: We're trying to shorten the trial, not
7 lengthen the trial.

8 THE COURT: Anyone can call Mr. Banta if there's a
9 point to make in his testimony.

10 MR. BRAFMAN: I'll move back.

11 MS. KASULIS: Thank you, Your Honor.

12 (Sidebar ends.)

13 (Continued on next page.)

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Hassan - cross - Brafman

1365

1 (Continuing.)

2 BY MR. BRAFMAN:

3 Q Sir, in March OF 2012, did you come to learn about a
4 person named Tom Haverty who was interested in becoming or
5 acting as CEO of Retrophin?

6 A I don't remember that.

7 Q Do you know who Tom Haverty is?

8 A Yes.

9 Q Who?

10 A He used to work in the R&D department in Schering-Plough
11 at a lower level.

12 Q Right. And do you remember whether Tom Koestler made
13 that recommendation to either Ken Banta or you?

14 A I don't remember that.

15 Q And do you have any recollection of whether Scopia
16 Capital wanted to invest in Retrophin?

17 A I don't remember that.

18 Q Do you know who Scopia Capital is?

19 A No.

20 Q You never heard of them?

21 A I never heard of them.

22 Q Okay. You can put the document down, sir.

23 Did you learn in September of 2012 that there was a
24 potential deal between Retrophin and Valeant pharmaceuticals?

25 A No, I didn't.

Hassan - cross - Brafman

1366

1 Q You never learned that in 2012?

2 A I don't recall that, no.

3 Q And do you know who Mike Pearson is?

4 A Yes.

5 Q Who is Mike Pearson?

6 A The former chief executive officer of Valeant.

7 Q Had you ever done business with him?

8 A He used to work as a consultant in some of the companies
9 I was at and then later on he became chief executive officer
10 of Valeant and then briefly he joined the board after Valeant
11 purchased Bausch & Lomb.

12 Q So Valeant was one of the giant pharmaceuticals companies
13 for a period of time; correct?

14 A It used to be a large company but not quite in the
15 category of the very large companies.

16 Q And when did Valeant and Bausch & Lomb hook up?

17 A August of 2013 is when the deal closing occurred.

18 Q And that received a lot of publicity in the financial
19 world and also in the pharmaceutical world; correct?

20 A Yes.

21 Q Now, I want to show you what's marked as DX 1203 and ask
22 you to look at it, read it, and then I will ask you some
23 questions, sir.

24 MR. BRAFMAN: I am not offering it into evidence,
25 Your Honor. Well, I might.

Hassan - cross - Brafman

1367

1 Q Just first read it first.

2 A Okay.

3 Q Do you recognize DX 1203 as an e-mail you were copied on
4 from Mr. Shkreli in September of 2012?

5 A Yes.

6 MR. BRAFMAN: I offer it into evidence, Your Honor.

7 MS. KASULIS: Objection.

8 THE COURT: Look, I will overrule this objection.

9 MR. BRAFMAN: Thank you, Your Honor.

10 (Defendant's Exhibit 1203 received in evidence.)

11 Q DX 1203 is now in evidence. I'm going to place it on the
12 screen --

13 MS. KASULIS: Your Honor, may I have a sidebar.

14 THE COURT: I'm sorry, the Government is asking for
15 a sidebar.

16 (Continued on next page.)

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Sidebar

1368

1 (The following occurred at sidebar.)

2 MS. KASULIS: Your Honor, I think we have the same
3 issue here. He says he doesn't remember anything --

4 THE COURT: He did remember this.

5 MS. SMITH: He said is this an e-mail --

6 MR. BRAFMAN: He said I remember getting it.

7 THE COURT: I think he confirmed that he got it. We
8 can ask the court reporter to check.

9 (Record read.)

10 MS. KASULIS: He didn't ask if he remembered
11 receiving it.

12 MR. BRAFMAN: Your Honor, so we don't have to have
13 another sidebar, this is an e-mail which can be arguably
14 introduced to show bias of the witness because shortly after
15 the Retrophin Valeant deal fell apart Bausch & Lomb ended up
16 in a deal with Valeant and Mr. Hassan knew that Retrophin was
17 on the hunt for the merger or the purchase and he needs to be
18 confronted with that.

19 MS. KASULIS: He doesn't say he knew. He said he
20 doesn't know about the Valeant and Retrophin deal.

21 MR. BRAFMAN: Trust me, he knows. I'm going to the
22 e-mail. If he recognizes it as having received it, I have a
23 right to introduce it in evidence.

24 THE COURT: No. He testified that he gets many,
25 many, many e-mails and he has an assistant read his e-mails.

Sidebar

1369

1 He doesn't read every e-mail. So you need to establish that
2 he saw this e-mail.

3 MR. BRAFMAN: Okay.

4 THE COURT: He was aware of the contents of it
5 before you can make the leap to your next step, okay?

6 MR. BRAFMAN: Yes.

7 THE COURT: All right. Mr. Brafman, so what I will
8 do is this: I am going to say it is admitted subject to your
9 ability to establish that those grounds that we talked about
10 here; that he remembers receiving it, that he remembers this
11 discussion.

12 MR. BRAFMAN: I'll ask those questions.

13 MS. KASULIS: Your Honor, I am confused as to what
14 the sequencing is here. Is it your understanding that he said
15 that he had no recollection this Valeant/Retrophin merger?

16 MR. BRAFMAN: I have a right to show --

17 MS. KASULIS: Can I be heard?

18 MR. BRAFMAN: Sure.

19 MS. KASULIS: You asked him the question does he
20 recall this potential deal and then you're showing this e-mail
21 where he says yes that's an e-mail I may have received. He's
22 saying I don't remember a fact and then you're showing him an
23 e-mail where he says I recognize this e-mail.

24 It doesn't mean that it's admissible. You have to
25 establish a basis from which an e-mail is admissible to either

Sidebar

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1 impeach him or you can show it to him to refresh his
2 recollection about a potential deal but just because someone
3 recognizes an e-mail doesn't mean that it's therefore
4 admissible. It has to be admissible for a purpose and I don't
5 know what this purpose is right now.

6 MR. BRAFMAN: Can I proceed with the questions and
7 we'll see where we get?

8 THE COURT: You are confident that upon seeing this
9 he will recall that he became aware at some point that the
10 Valeant --

11 MS. KASULIS: It's not even clear this is Retrophin.
12 It says MSMB Capital. It's not even clear from this e-mail
13 this is a Retrophin deal.

14 MS. SMITH: He's writing from an MSMB account. It
15 doesn't say anything about Retrophin.

16 THE COURT: It's addressed to Valeant. You are
17 right, it is an MSMB e-mail.

18 MR. BRAFMAN: Let me see if I can clear this up by
19 questioning him before I introduce it, okay?

20 THE COURT: Then let us wait on its admissibility to
21 see whether you can clear it up, the confusion, all right?

22 MR. BRAFMAN: Okay.

23 MS. KASULIS: Your Honor, should we take a short
24 break? Does the jury need a break?

25 THE COURT: I can ask them. (Sidebar ends.)

1371

1 THE COURT: Does the jury need an afternoon break
2 right now?

3 All right. Please put your notebooks face down on
4 the chairs. Don't talk about the case and we will come to
5 retrieve you at approximately 3 o'clock.

6 (Recess taken.)

7 (Continued on next page.)

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1 MS. SMITH: We have another witness who is in from
2 Texas, and it's relatively short, but if possible, we would
3 like to get him on and off today.

4 THE COURT: All right. If that's possible.

5 MS. SMITH: Yes.

6 THE COURT: Did you want to be heard, Mr. Brafman?

7 MR. BRAFMAN: If you ask me to be heard, I will, but
8 I would ask if we could stop at 5:00 today.

9 THE COURT: Well, can we see where we are with the
10 witnesses, if that's possible?

11 MR. BRAFMAN: Yes.

12 THE COURT: I mean, if we can, I certainly will. I
13 just don't want to have someone have to spend the night or
14 spend the weekend or come back. I guess we'll have to come
15 back. Let's see if we can get started. This is a very long
16 break, so if we can get started, I'd appreciate it.

17 MR. BRAFMAN: We can get started. I will move on
18 and come back to this.

19 THE COURT: All right.

20 (Jury enters the courtroom.)

21 THE COURT: We have all jurors. Please be seated.

22 Mr. Brafman, you may resume your cross of this
23 witness.

24 MR. BRAFMAN: Thank you.

25 CROSS EXAMINATION (Continuing)

F. Hassan - cross - Brafman

1373

1 BY MR. BRAFMAN:

2 Q Mr. Hassan, I'm going to refer your attention to
3 Government Exhibit 103-18, which is in evidence. I am putting
4 it up here, or if you want to put it up on the screen,
5 whichever is easier.

6 I want the jurors to be able see it, it is in
7 evidence.

8 MR. BRAFMAN: Tab one of your binder, sir.

9 THE WITNESS: Thank you. Yes.

10 Q Mr. Hassan, if we could look at the screen, please,
11 Government Exhibit 103 in evidence.

12 MR. BRAFMAN: If we could bring it up, please? I
13 can't read it. I don't know if anybody else can.

14 THE COURT: Can you make it bigger?

15 MR. BRAFMAN: Do the bottom portion, it is an e-mail
16 from Mr. Shkreli. Okay.

17 Q Now, on direct examination, Ms. Kasulis showed you this
18 document, which is an e-mail from Martin Shkreli, essentially
19 to Martin Shkreli, but you ended up getting because you
20 responded to it, and it says: "Subject: Retrophin completes
21 reverse merger." And it reads: "Friends, please see the
22 attached press release. As you many of you know, I have
23 started a biotechnology company, Retrophin. This is my
24 primary focus going forward and I hope you will support me in
25 this new role as the I will use my 12 years of professional

F. Hassan - cross - Brafman

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1 investing in healthcare stocks to guide Retrophin create
2 shareholder value."

3 And then, if we could bring it down so we can see
4 your response -- and you respond, am I correct, sir, "Martin,
5 I wish you success. Happy holidays. Fred."

6 Do you see that?

7 A Yes, sir.

8 Q It also had attached to it a press release?

9 MR. BRAFMAN: If we could bring it up again, please,
10 the bottom portion.

11 Q It had a press release announcing Retrophin completes
12 reverse merger. Gateway creates publically-traded
13 biotechnology company.

14 When Ms. Kasulis asked you why did you respond to
15 this e-mail, you said, you know, I try to be nice, when I get
16 something, even if I don't know what it's about, I respond to
17 it. Words or substance, is that what you said?

18 A Yes, largely. I get lots of peoples giving me updates on
19 what's going on and I customarily send them an encouraging
20 note.

21 Q At the time you got this e-mail, you didn't know
22 Dynagrow, of which you are a passive investor, had invested in
23 Retrophin and that is why you were getting this press release?

24 A I probably knew at that time, yes.

25 Q So this wasn't just a hello, how are you. This is

F. Hassan - cross - Brafman

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1 telling you that your fund has Retrophin, which is now going
2 to be a publicly traded company; correct?

3 A My daughter was the manager of the fund, I was a passive
4 investor in the fund, but the reason this was sent, and I do
5 this all the time just to encourage people and acknowledge the
6 good news.

7 Q But you weren't picked out of the Yellow Pages to get
8 this. You were targeted because you had a connection, through
9 your daughter and through Dynagrow, to Retrophin; isn't that
10 true?

11 MS. KASULIS: Objection.

12 THE COURT: Sustained.

13 Q Do you think this was just a blast e-mail that you got
14 with no reason?

15 A I don't know who else got the e-mail.

16 Q But you got it?

17 A I did get it.

18 Q And your response isn't to Martin why is someone sending
19 me an e-mail about a company I know nothing about, you said
20 congratulations and you wished him success and happy holidays,
21 right?

22 A I wrote a note, which is generally very brief, and that's
23 what I sent out here. I didn't get into the details of this
24 announcement.

25 Q Did you know that, before they went public, Martin

F. Hassan - cross - Brafman

1376

1 Shkreli gave your daughter 5,000 additional shares of
2 Retrophin without any cost basis?

3 A I wasn't aware of that.

4 Q Now, this comes to you, if we can, in December of 2012;
5 is that correct? If we can drop down again to the date, do
6 you see the date on top, sir?

7 A Yes.

8 Q It comes to you in December 2012, almost at the end of
9 the year; correct?

10 A Yes.

11 Q Did you have any clue, at that time, that your daughter
12 and Mr. Shkreli are having a series of disagreements about her
13 wanting to get back her investment in MSMB?

14 A At some point I became aware of it.

15 Q Did you become aware of it then?

16 A I can't say whether this was related to that or not.

17 Q Now, when you said congratulations, I wish you success to
18 Martin Shkreli, you did not say and by the way, give my
19 daughter back her investment; correct? This is a pleasant
20 response to Mr. Shkreli; correct?

21 A Yes, I just get lots of things at the end of the year,
22 and I just wanted to wish him happy holidays. As far as the
23 other part is concerned, at some point, I did learn about it.

24 Yeah.

25 Q I'm sorry, at some point in 2013, 2014, or 2015?

F. Hassan - cross - Brafman

1377

1 A It was around the time when she said she was not getting
2 her money from the fund when it had been promised to her and I
3 became aware of that. Exactly at what point she talked to me
4 about it, I don't remember.

5 Q And did you have any conversation with Brent Saunders,
6 your -- one of your right-hand men about the fact that the
7 person you introduced my daughter to and she invested with is
8 not being responsive, did you ever say hey, Brent, what did
9 you get Sarah involved in?

10 A No, I -- first of all, Brent is a close friend, but I
11 have some others too, so I wouldn't call him a right-hand man,
12 but I really believed that this could get resolved between
13 Sarah and Martin. And I did not want to get involved with it
14 directly or involve Brent, because my relationship with Brent
15 is a pretty broad relationship, and I just didn't want to get
16 to this subject with Brent.

17 Q Going to July 30th of 2013, did you know by then whether
18 there is any disagreement between your daughter and Mr.
19 Shkreli concerning her investment in MSMB or Retrophin?

20 A I became aware at some point that she felt that some
21 money was owed to her and it was not given, it caused her a
22 lot of distress.

23 Q When was that?

24 A Late '12 or early '13.

25 Q Okay. So if it is late '12 or early '13, I am going to

F. Hassan - cross - Brafman

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1 ask you to look at this document marked for identification as
2 DX 1029, and ask you if you recognize this as an e-mail that
3 Mr. Shkreli wrote to you and your response?

4 A So, I don't recall this e-mail.

5 Q Do you recognize it as an e-mail coming from you to Mr.
6 Shkreli?

7 A Yes.

8 Q And do you remember, in July 30th of 2013, that the *New*
9 *York Times* did an article about you and your discussion of
10 emerging leaders in the pharmaceutical industry?

11 A I don't remember the subject of the article, but I know I
12 was featured in the *New York Times*.

13 Q At or about that date?

14 A Sometime in the 2013 period. This probably could have
15 followed my book that came out earlier in 2013.

16 Q Well, let me show you what's marked for identification as
17 DX 1210, and tell me if that's the article that the *New York*
18 *Times* did about you?

19 A I now remember this article.

20 Q We are not putting the article in evidence. The date of
21 the article is July 27th of 2013; is that correct?

22 A That is correct.

23 Q Now, I am asking you to look again at DX 1209, which is
24 dated July 30th of 2013, three days after the article appears,
25 and tell me if it -- you recognize it as an e-mail chain that

F. Hassan - cross - Brafman

1379

1 you received from Martin Shkreli and an e-mail response from
2 you?

3 A Yes. While I don't recall it today, this is an e-mail
4 that I did receive from Martin Shkreli and I did respond to
5 that.

6 MR. BRAFMAN: I offer it into evidence, Your Honor.

7 MS. KASULIS: Objection, Your Honor.

8 THE COURT: Well, I am going to overrule the
9 objection and admit 1209.

10 MR. BRAFMAN: Thank you, Judge.

11 Q Now that it is in evidence, if we could put it up on the
12 ELMO, ignore my highlighting, but I'm going to refer to it
13 anyway, so I would just be underlining it while we speak.

14 This is now DX 1209 in evidence and I want to read
15 it with you, sir. It is from Fred Hassan, with your e-mail
16 dated July 30, 2013 at 1:00 p.m., to Martin Shkreli, and the
17 subject is the *New York Times* interview; am I correct, sir?

18 A Yes, sir.

19 Q We start from the bottom of Mr. Shkreli's note to you.
20 It says: "Hi, Fred. July 29th. I read the *New York Times*
21 article and I really appreciate you giving this to the world.
22 Your comments here, and in other places, have helped me
23 tremendously. Thanks for making your best advice available to
24 not just a few of us, but everyone willing to pick up a
25 newspaper. Thanks. Martin Shkreli of Retrophin, Inc."

F. Hassan - cross - Brafman

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1 Did I read that correctly?

2 A Yes.

3 Q Now, I think you told us a minute ago that you learned of
4 the disagreement between your daughter and Mr. Mr. Shkreli
5 sometime in late 2012, or early 2013, did you say that a few
6 minutes ago?

7 A Yes.

8 Q So now it is the middle of 2013, we are at the end of the
9 seventh month of 2013, and what you say to Mr. Shkreli is:
10 "Many thanks. Great to see hardworking young business
11 builders like yourself gain traction. Fred."

12 Did you say that?

13 A Yes.

14 Q And this was after you telling us that you've learned
15 that your daughter was having disagreements with Mr. Shkreli,
16 trying to get her money back; is that correct?

17 A Yes.

18 Q Now, did there come a time that you learned that
19 Retrophin had been placed on the stock exchange, the NASDAQ
20 Stock Exchange?

21 A I don't remember the exact time when it happened, but at
22 some point it did get to NASDAQ, yes.

23 Q And if I can show you DX 1206, which is not in evidence
24 yet, and ask you, please, to look at it and tell me whether
25 you recognize this document as an e-mail you received, among

F. Hassan - cross - Brafman

1381

1 other people, from Martin Shkreli?

2 A I don't remember this e-mail.

3 Q Do you see your name copied on it?

4 A Yes.

5 Q Okay. You're not telling us you didn't get it, you're
6 just telling us you don't remember whether you got it?

7 A That's right.

8 Q Does the e-mail refresh your recollection that you and
9 your daughter were thanked by Mr. Shkreli on January 10, 2014?

10 MS. KASULIS: Objection, Your Honor.

11 THE COURT: Sustained.

12 Q Do you remember being thanked in an e-mail by Mr.
13 Shkreli?

14 MS. KASULIS: Objection.

15 THE COURT: Sustained.

16 Q You told you didn't know the date upon which NASDAQ
17 approved Retrophin. Does the e-mail refresh your recollection
18 about the date?

19 A No, it doesn't.

20 Q Is it on or about 2014 or is it before or after?

21 A Sometime in 2014. I wasn't following it that closely.

22 Q Do you know that your daughter made about a
23 million-and-a-half dollars profit because of her relationship
24 with Mr. Shkreli?

25 A I was not aware of the exact figure, but in the end it

F. Hassan - cross - Brafman

1382

1 turned out okay for her.

2 Q That's not a lot of money to you?

3 A She did fine with her investment.

4 Q Okay. So I'm asking you do you know approximately how
5 much money she made on her investment?

6 A I don't know.

7 Q Did she ever come to you and say dad, I hit a home run
8 with my Retrophin and my MSMB investment?

9 A She didn't talk to me about it. She was relieved that
10 she managed to get her money out of this. She was, at one
11 point, very concerned about the money being totally gone and,
12 beyond that, she felt very unhappy with the whole situation.

13 Q And very unhappy until she got the million-and-a-half
14 dollar check?

15 A That happened a lot later, a lot down the road.

16 Q Do you know when it happened?

17 A I think a couple of years ago.

18 Q But you don't know when she got the money, do you?

19 A At some point she got it, when she got all the approvals
20 and commissions. She needed to get out of a restricted stock,
21 or something. She was not able to do a lot of things for a
22 long time, but in the end, she was able to trade the stock.

23 Q And in the end, she was very happy with the money she
24 made?

25 A The investment was -- it did return a good multiple, yes.

F. Hassan - cross - Brafman

1383

1 Q Well, when you invest a total of 450,000 and you get back
2 1.8 million, that's a pretty good investment; isn't that true?

3 A This one turned out good for her, yes.

4 Q Okay. Now, in April of 2014, do you remember having a
5 discussion with a person named William Looney?

6 A I remember receiving an e-mail from him.

7 Q Who is William Looney?

8 A William Looney used to work with Pfizer and I got to know
9 him. I used to be the head of the International Federation
10 for Pharmaceutical Manufacturers Association that used to meet
11 in Geneva, and he was a representative of Pfizer, in Geneva,
12 Switzerland, and then he went on to work for Pharmaceutical
13 Executive. So I did keep up my relationship with him.

14 Q Was he someone who you respected?

15 A Yes.

16 Q Was he someone who was well considered in the
17 pharmaceutical industry?

18 A He wasn't a senior person. He was the European
19 representative in this organization, but generally well
20 regarded, but not very well known.

21 Q But you knew him?

22 A Yes, I did.

23 Q And you knew him to be the editorial director of Advance
24 Star; is that correct?

25 A I thought it was Pharmaceutical Executive magazine.

F. Hassan - cross - Brafman

1384

1 Q Okay. And Pharmaceutical Executive magazine, on
2 occasion, did profiles on emerging leaders in the
3 pharmaceutical industry; is that correct?

4 A That is correct.

5 Q If you remember, in April of 2014, Mr. Looney inquired of
6 you as to who you could recommend as an emerging -- among the
7 emerging young people in the pharmaceutical industry; is that
8 correct?

9 A Something to that effect. I have some recollection of
10 that, yes.

11 Q And a person you mentioned was Martin Shkreli?

12 A I don't believe I recommended him.

13 Q He mentioned Martin Shkreli to you and you confirmed that
14 Martin Shkreli was a good person in the pharmaceutical
15 industry?

16 MS. KASULIS: Objection.

17 THE COURT: Sustained. Rephrase.

18 Q Let me show you what's being marked for identification as
19 Defense Exhibit 1229, dated April 28, 2014.

20 MS. KASULIS: Your Honor, we don't have that.

21 MR. BRAFMAN: I'm going to give you a copy.

22 THE WITNESS: Thank you.

23 MR. BRAFMAN: You're welcome.

24 THE COURT: Thank you.

25 Q Have you had a chance to look at it?

F. Hassan - cross - Brafman

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1 A Yes, sir.

2 Q Does it refresh your recollection that, on April 28th,
3 Mr. Looney contacted you and explained that he was looking for
4 young people as emerging leaders in pharma, and Martin Shkreli
5 came up, along with a reference that you had been advising
6 him?

7 A This is what it says here, yes.

8 Q How did you respond, if you recall?

9 A So --

10 MS. KASULIS: Objection, Your Honor. It is not
11 responding to Mr. Looney.

12 Q Do you recall your response?

13 THE COURT: Are you saying responding to Mr. Looney?

14 MR. BRAFMAN: Yes.

15 Q Can you tell me if you recall your response?

16 A I do.

17 Q And what did you say?

18 A It was meant to be a very neutral response.

19 Q What did you say?

20 A I didn't want to --

21 Q What did you say?

22 A I said I don't want to get into -- he wanted to find out
23 if he was in the top 15, and I didn't want to confirm or deny
24 -- I did not want to confirm that he was going to be in the
25 top 15.

F. Hassan - cross - Brafman

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1 Q But what did you say about Martin Shkreli? It is a
2 simple question.

3 A I can read it for you if you want me to.

4 Q Read it for me.

5 MS. KASULIS: Objection, Your Honor.

6 THE COURT: Excuse me. The question is are you
7 asking for his response to Mr. Looney or to others?

8 MR. BRAFMAN: Yes. No. Let me do it this way.

9 Q It's a fair statement that what you said to Mr. Looney,
10 in part, was Martin is certainly a smart entrepreneur?

11 THE COURT: You can't read this into the record.

12 MR. BRAFMAN: I am not. I'm asking him the
13 question.

14 Q Did you say to Mr. Looney that Martin was a smart
15 entrepreneur; yes or no?

16 A Yes.

17 Q This was in 2014, long after the issues with your
18 daughter arose between her and Mr. Shkreli; is that correct?

19 A Yes.

20 Q And then, there was another comment from you to Mr.
21 Looney, two days later, and I will show 10337, and see if it
22 refreshes your recollection. I think it's marked as
23 Government 10337.

24 MS. KASULIS: It is -- Your Honor, Mr. Looney is not
25 on Defense Exhibit 1229. I think there has been multiple

F. Hassan - cross - Brafman

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1 statements that he was and he is not.

2 THE COURT: Well, I think these are the kind of --
3 you know, we shouldn't be making speaking objections in front
4 of the witnesses or the jury.

5 MS. KASULIS: I apologize, Your Honor.

6 THE COURT: The jury should disregard all of that
7 conversations.

8 And we want to discuss this further at sidebar, I do
9 think there is a clarification needed. Mr. Brafman and the
10 Government may step to the sidebar, please.

11 MR. BRAFMAN: Your Honor, Mr. Looney --

12 THE COURT: Sir, we are not going to do this in
13 front of the jury. Both of you, the Government and Mr.
14 Brafman.

15 (Sidebar held outside the hearing of the jury.)

16 (Continued on the following page.)

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Sidebar

1388

1 (The following sidebar held outside of the hearing
2 of the jury.)

3 MR. BRAFMAN: Your Honor, the previous exhibit, 1229
4 says Martin is a smart entrepreneur, is a response to Mr.
5 Looney.

6 THE COURT: No, he is not responding. He is
7 forwarding this to these folks. Do you see? Saying he is a
8 smart entrepreneur. If there are other young people you could
9 think of, let me know. He is not telling Mr. Looney.

10 MR. BRAFMAN: But the next exhibit, which I am about
11 to introduce, if they had given me a second, is a -- I will
12 show you another. I need that next exhibit.

13 MS. KASULIS: This one is forwarded to Mr. Hassan's
14 friend.

15 THE COURT: 1229 is forwarded. It is not a response
16 to Mr. Looney.

17 MS. KASULIS: This one is a response, GX 103-37.

18 MR. BRAFMAN: That's the one I am going through.

19 THE COURT: You have created an impression that this
20 is the response. This response from Mr. Hassan dated
21 April 28, 2014 was a response to Mr. Looney.

22 MR. BRAFMAN: It's the same.

23 THE COURT: But it's not. Mr. Looney is not copied
24 here.

25 MR. BRAFMAN: I will clear it up.

Sidebar

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1 THE COURT: That's the misperception that it is
2 creating.

3 MR. BRAFMAN: I will clear it up.

4 MS. KASULIS: Your Honor, I apologize, I really do.

5 THE COURT: It's all right. I understand.

6 (Sidebar ends.)

7 (Continued on the following page.)

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F. Hassan - cross - Brafman

1390

1 Q I want to go back and clear something up. If you could
2 look at 1229, that is marked for identification, dated April
3 28 of 2014.

4 Do you have it before you?

5 A 1229.

6 Q Do you have it, sir?

7 A Yes, sir.

8 Q Who is that an e-mail from?

9 A Which one?

10 Q Is it from you?

11 A The e-mail arrived from Bill Looney and I sent the e-mail
12 out to some people.

13 Q Okay. So you got an e-mail from Bill Looney, which you
14 then forwarded to some people; correct?

15 A Yes.

16 Q And the people you forwarded it to are your basically
17 closest people; Tom Kessler, Amy Brent, Amy Saunders, Bob
18 Bertolini. Correct?

19 A That is correct.

20 Q And the subject of it was emerging leaders in pharma; is
21 that correct?

22 A Yes.

23 Q And what you essentially, if you recall, said to them was
24 Martin is certainly a smart entrepreneur; correct?

25 A That is correct, although we should probably read the

F. Hassan - cross - Brafman

1391

1 whole answer.

2 Q But at the time you said that, this was in 2014, you
3 still believed that Martin was a smart entrepreneur; correct?

4 A Yes.

5 Q And then you encouraged them to say if there are any
6 other people you could think of for the list of 15 in this
7 magazine, please let me know, and you signed it Fred; correct?

8 MS. KASULIS: Objection, Your Honor.

9 A Correct.

10 THE COURT: Sustained. Sorry. Sustained.

11 Q Now, I want to know you what is marked as Government
12 Exhibit 103-37.

13 Do you have that, sir?

14 A What's the number?

15 Q 103-37. It has a Government Exhibit sticker on it.

16 A Yes.

17 Q And you recognize that as an e-mail directly from you to
18 Bill Looney, no one else is being copied on it?

19 A Yes.

20 Q And do you remember sending it on April 30, 2014?

21 A Yes.

22 MR. BRAFMAN: I offer it into evidence, Your Honor.

23 MS. KASULIS: No objection.

24 THE COURT: We will admit 103-37. This is
25 Government Exhibit 103-37.

F. Hassan - cross - Brafman

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1 Did you want to re-designate it as a Defense
2 Exhibit?

3 MR. BRAFMAN: I am going to mark it as a Defense
4 Exhibit, as DX 1230. Yes, your Honor.

5 THE COURT: We will admit Defense Exhibit 1230,
6 formerly admit as Government Exhibit 103-37.

7 MR. BRAFMAN: Your Honor, if I may approach the
8 witness, because I want to get a clean copy because mine is
9 all marked up. And I'll put in on the screen, if I get the
10 clean copy, you will see it.

11 Q Can I have the document, sir?

12 A This one?

13 Q Yes. Thank you.

14 You are taking it out of your Government binder; is
15 that correct?

16 A Yes.

17 Q But it wasn't introduced by the Government, was it?

18 A Probably not.

19 MR. BRAFMAN: This is now marked DX 130; is that
20 correct?

21 THE COURT: DX 1230, sir.

22 Q Now, that it is in evidence, I am going to place it on
23 the screen, and hopefully the jury can see it.

24 On the bottom, you have an e-mail from Mr. William
25 Looney, who we discussed earlier; is that correct?

F. Hassan - cross - Brafman

1393

1 A Yes.

2 Q And it is addressed to you, and it reads: "Fred, I have
3 been looking for some very young people to add to our annual
4 citation feature on emerging leaders in pharma and Martin
5 Shkreli's name came up, along with a reference that you have
6 been advising him in his effort to launch a start-up. I
7 wonder, number one, you would find him suitable given you're
8 familiarity with the magazine. And two, would be able to flag
9 an invitation and put it in front of him. As you know, we
10 chose 15 people each year and prepare a career profile, based
11 on an interview, as part of a group portrait in the magazine.
12 We have a pretty diverse group lined up this year, including
13 the 38 year-old CEO of a Russian drug company, who also
14 happens to be a world-class poker player. If there is anyone
15 else you can recommend, please let me know. Thanks, Bill
16 Looney."

17 Did I read that correctly?

18 A Yes.

19 Q And what he wanted is you to say something about Martin
20 Shkreli, who, according to him, was someone who you had been
21 advising in his effort to launch a start-up biotech; correct?

22 A That's what he had heard, yes.

23 Q And he has also been looking for someone who would be an
24 emerging leader in pharma; correct?

25 A Yes.

F. Hassan - cross - Brafman

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1 Q By pharma, he means to be pharmacology; correct?

2 A Pharmaceuticals.

3 Q Pharmaceuticals, okay. Now, you respond now, in April of
4 2014, long after your daughter has started her e-mail
5 correspondence with Mr. Shkreli, and what you say is: "Dear
6 Bill, I have been giving more thought to your note about
7 emerging leaders in pharma. I cannot think of anyone new
8 right now that obviously comes to mind. As I said, Martin
9 Shkreli is a smart entrepreneur. I was introduced to him at a
10 JPMorgan meeting, but have not had any opportunity to work
11 with him. I look forward to your issue. Sincerely, Fred."

12 Did I read that correctly?

13 A Yes.

14 Q Is that a reference for Martin Shkreli?

15 MS. KASULIS: Objection, Your Honor.

16 THE COURT: Overruled.

17 Q In your mind, is that a reference for Martin Shkreli?

18 A I think given the context, I am being very neutral about
19 him.

20 Q Neutral? He's asking you to identify emerging leaders in
21 pharmaceuticals and you describe Shkreli as someone you think
22 of as a smart entrepreneur, that's neutral?

23 A What I really went to say was that I was introduced to
24 him at a meeting and have not had a chance to work with him.

25 Q But your daughter has been dealing with him for three

F. Hassan - cross - Brafman

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1 years?

2 A Yeah, she had a separate relationship with him which I
3 did not have.

4 Q But you had all of the people around you, Brent Saunders,
5 Bob Bertolini, Ken Banta, had been dealing with him for years;
6 is that correct?

7 A They had more interactions with him than I did.

8 Q But at this point, the man is asking you for -- about
9 Martin Shkreli's name come up where they are doing a feature
10 on emerging leaders in pharma; you didn't say to him, not
11 Martin Shkreli, he's ripping off my family. You didn't say
12 that to him, did you?

13 A Maybe that's my nature, I just didn't want to hurt a
14 young man.

15 Q You didn't want to hurt him, you helped him?

16 A I'm not sure if I -- I was trying to telegraph to Bill
17 Looney that I was neutral on Martin Shkreli.

18 Q Why is when Fred Hassan, sort of the dean of the
19 pharmaceutical industry, describes someone as a smart
20 entrepreneur, why isn't that a recommendation or a reference,
21 or at the very least, a compliment?

22 MS. KASULIS: Objection to form.

23 THE COURT: Well, it is a complex question and
24 somewhat argumentative.

25 Do you want to just ask him what he meant when he

F. Hassan - cross - Brafman

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1 said smart or whether he intended it to be a positive
2 statement?

3 MR. BRAFMAN: Yes.

4 Q Did you intend that as a positive?

5 A I meant that aspect to be a positive, but I didn't want
6 to nominate him to be among the fifteen.

7 Q But you didn't say that.

8 A I just didn't want to hurt a young man, but I tried to
9 telegraph Bill Looney that I did not know Martin very well.

10 Q You knew him well enough to conclude that he was a smart
11 entrepreneur?

12 A I had that impression of him at that time.

13 Q In April of 2014, two-and-a-half years after your
14 daughter is trying to get back her money, you still believed
15 that Martin was a smart entrepreneur?

16 MS. KASULIS: Objection, Your Honor.

17 THE COURT: Sustained.

18 A I --

19 THE COURT: Sustained.

20 I sustained the objection, you don't have to answer
21 it.

22 Q You said, sir, that you never permitted Martin Shkreli to
23 use your name in any materials as a recommendation for
24 Retrophin; is that correct?

25 A That's correct.

F. Hassan - cross - Brafman

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1 Q Did you ever see any materials where you are listed as a
2 reference for Martin Shkreli?

3 A No, I didn't see the materials.

4 Q Did you ever see any materials where you were listed as
5 an advisor?

6 A No, I did not.

7 Q Did the Government ever show you materials that list Ken
8 Banta and Brent Saunders as people who are invested in the
9 company?

10 A In the preparation part, I did see that.

11 Q When they prepared you, they showed you these documents?

12 A Yes.

13 Q And did you see that -- did you see in the documents
14 concerning Retrophin that --

15 MR. BRAFMAN: Give me one second, Your Honor.

16 Q That Ken Banta was a consulting strategic vice president
17 and a former Schering-Plough vice president for corporate
18 strategy?

19 A I recall something to that effect, yes.

20 Q Did you call Ken Banta and say when did you become a
21 senior corporate strategist for Retrophin? Did you ever ask
22 him that?

23 A I don't remember that question. I have not talked with
24 Ken Banta for a very long time.

25 Q What about Brent Saunders, did you tell him hey, you are

F. Hassan - cross - Brafman

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1 now on the board of directors of Retrophin, former
2 Schering-Plough CEO, you are on the board of directors of
3 Retrophin? Did you ever ask him?

4 A I saw this information relatively recently and I was
5 instructed not to talk to Brent or to Ken.

6 Q And the only time you knew that he was on the board of
7 directors of Retrophin is when the Government showed you this
8 material in preparing for your testimony in this case?

9 A Yes.

10 Q When Martin Shkreli was arrested and indicted to giant
11 fanfare, did you ever say to Brent Saunders, oh, my God, are
12 you connected to him in any way?

13 A I did not follow all those news, at that time, and I
14 really don't talk -- I do see Brent a lot. I saw him only
15 four weeks ago, but I really don't talk about Martin Shkreli
16 with Brent.

17 Q Brent Saunders you saw four weeks ago, did you tell him
18 you were going to be testifying in the Martin Shkreli trial as
19 a Government witness?

20 A No, I did not.

21 (Continued on following page.)

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F. Hassan - Cross - Brafman

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1 (Continuing)

2 BY MR. BRAFMAN:

3 Q You specifically did not?

4 A I'm very sure I did not.

5 Q Did Brent Saunders tell you he was on the government
6 witness list?

7 A He did not talk to me about this case.

8 Q Now, did you see in the document when you were looking at
9 it in the government office that Fred Hassan, you, were listed
10 as one of the investors?

11 A Something to that effect, yes.

12 Q Well, you are a passive investor in Retrophin, aren't
13 you?

14 A I'm a passive investor in the fund, but I was not myself
15 an investor in Retrophin.

16 Q Let's see if we can break this down. Dynagrow is a fund
17 that basically has your money, your wife's money, and a little
18 bit of your daughters' money, correct?

19 A Yes.

20 Q And your money and your wife's money is 90 percent of
21 Dynagrow, correct?

22 A More than 90 percent.

23 Q And Dynagrow invested in Retrophin, correct?

24 A Among the -- in the portfolio, Retrophin was one of the
25 investments.

F. Hassan - Cross - Brafman

1400

1 Q So, 90 percent of that investment is yours or your wife's
2 or both.

3 A I think you have to look at it from a fund point of view.

4 Q Fund or fund?

5 A Fund.

6 So, the fund was 10 to 20 million, and of that
7 \$150,000 was invested in this particular asset.

8 Q I know \$150,000 may not mean a lot to a person in your
9 position, but --

10 MS. KASULIS: Objection.

11 THE COURT: Excuse me.

12 MR. BRAFMAN: I'm sorry.

13 THE COURT: Sustained.

14 Q \$150,000 invested into Retrophin, 90 percent of that is
15 your money, correct?

16 A I'm not sure if I can segregate my money in a particular
17 asset. All I had was ownership of a fund. It's hard for me
18 to see me owning a piece of any particular asset in the same
19 ratio.

20 Q When your daughter got the money back from Dynagrow's
21 investment, did she keep it or did she put it back into
22 Dynagrow?

23 A I don't know what happened to the money. I would assume
24 it went back, but I don't know.

25 Q And if it went back into Dynagrow, your share and your

F. Hassan - Cross - Brafman

1401

1 wife's share would total about 90 percent of the payment,
2 correct?

3 A The fund has an overall value that goes up or down
4 depending on individual investments. So, this clearly helped
5 that overall value, but there are other investments that did
6 not do very well.

7 Q I don't want to talk about any investment besides
8 Retrophin. You testified earlier today that the return on the
9 investment that your daughter made was significant, correct?

10 A On this particular investment, re.

11 Q And on this particular investment, she more than tripled
12 the amount of her investment, correct?

13 A I don't know what the multiple was, but it was a good
14 return.

15 Q And the good return was in large part a Dynagrow return,
16 correct?

17 A The return helped the overall Dynagrow portfolio, yes.

18 Q And the Dynagrow portfolio is partly owned by you as a
19 passive investor?

20 A The overall portfolio, the fund is owned by me and my
21 wife predominantly, yes.

22 Q Would it be true or false to say that Fred Hassan was an
23 investor in Retrophin as a result of your passive interest in
24 Dynagrow?

25 A I don't think that's the way one would normally define

F. Hassan - Cross - Brafman

1402

1 it. Generally, when people invest in a fund, they entrust it
2 with a fund manager to really -- investor. The people who
3 invest in the fund are really investors in the fund, not
4 investors in the company.

5 Q But your investor -- your fund is managed by your
6 daughter.

7 A That is correct.

8 Q It's not a stranger.

9 A No.

10 Q Someone who you are, I think you testified, not giving
11 formal control but taking an interest to see that she's doing
12 well, correct?

13 A Doing well and having a lot of faith that she can
14 actually handle it, given her credentials, because they were
15 pretty impressive for a young person.

16 Q I agree, they were. No doubt about it. You should be
17 very proud of her.

18 A Thank you.

19 MS. KASULIS: Objection, your Honor.

20 Q But she made a lot of money for the fund that she was
21 managing as a result of the investment in Retrophin, correct?

22 A That part of the investment helped the fund quite a bit,
23 yes.

24 Q When you say "helped the fund," as a practical matter
25 Fred Hassan and your wife ended up with more money in the

F. Hassan - Cross - Brafman

1403

1 fund, if you wanted to take it out then, than you had before
2 the investment in Retrophin, correct?

3 A If we wanted to withdraw money from the fund, it will
4 certainly help the valuation of the fund. We have not, to the
5 best of my knowledge, taken money out of the fund.

6 Q I'm not suggesting that you did.

7 But that was a decision you made, correct?

8 A Correct.

9 Q But the fund, as a result of a redeposit of these funds,
10 grew in size.

11 A Yes.

12 Q And if it made a million dollars, the fund was increased
13 in valuation.

14 A Yes.

15 Q And if 90 percent of that was yours, Fred Hassan enjoyed
16 a growth in valuation as a result of the return on the
17 investment in Retrophin; correct, yes or no?

18 A Yes, in the fund. But we didn't take the cash out of the
19 fund. But you're right, the valuation did go up by that
20 amount, yes.

21 Q Now, on direct examination -- excuse me.

22 In evidence as Government Exhibit 103-35, which is a
23 cover sheet and a K-1 that has been put into evidence through
24 your daughter, and it's listed as Sarah Dynagrow and Fred
25 Hassan. You can look at that and tell me if you're familiar

F. Hassan - Cross - Brafman

1404

1 with that document.

2 A It's customary for these K-1s to be issued. I don't
3 remember the details of this one.

4 Q Did you ever see it before today?

5 A Yes.

6 Q Did the Government show it to you?

7 A Yes.

8 MR. BRAFMAN: So, now that it's in evidence, I want
9 to put it up. Can you put up 103-35, please?

10 You don't have it? Would it save time if I just put
11 it up on the Elmo?

12 MS. SMITH: Yes.

13 MR. BRAFMAN: Can we allow the jury to see this
14 document, Judge? It's in evidence but to save some time...

15 THE COURT: Yes.

16 Q You have it in front of you, sir?

17 A Yes.

18 Q You understand that when you invest in a partnership, at
19 the end of the tax year the investor receives a K-1, which you
20 use when you file your tax returns; is that right?

21 A Yes.

22 Q You've seen that in almost every partnership that you've
23 ever been in; the tax year ends, they send you what's known as
24 a K-1.

25 That's just the name of the form, right?

F. Hassan - Cross - Brafman

1405

1 A Yes.

2 Q Now this is addressed to Sarah Dynagrow and Fred Hassan.
3 It says: Attached is your copy of the 2012 partnership Form
4 1065 Schedule K-1. This schedule summarizes your information
5 from the partnership. This information has been provided to
6 the Internal Revenue Service with the U.S partnership return
7 of income Form 1065. The information provided on this
8 schedule should be entered on your tax return in accordance
9 with the instructions on Schedule K-1, Page 2. If your return
10 will be prepared by your accountant or attorney, you should
11 provide a copy of this schedule to the preparer with your
12 other tax information. We thank you for the opportunity to
13 serve you. Very truly yours, Retrophin, LLC.

14 Do you see that?

15 A Yes.

16 Q And I think you told us that you never invested
17 personally in Retrophin, correct, sir?

18 A Correct.

19 Q And the tax document which arrived had Sarah Dynagrow and
20 Fred Hassan listed under 101 Plaza Real South, Suite 203-S
21 Boca Raton, Florida, with the ZIP code, correct?

22 A Yes.

23 Q And it comes from Retrophin, correct?

24 A Yes.

25 Q And it indicates that -- and it gives you the tax

F. Hassan - Cross - Brafman

1406

1 information, correct, on the other schedules?

2 A Yes.

3 Q Now, you never saw this before the Government showed it
4 to you?

5 A No.

6 Q And you never discussed it with your accountant?

7 A No, I did not.

8 At some point, Sarah did tell me that there was a
9 lot of this stuff going on, but I don't remember this
10 particular document, where my name was getting put on these
11 things. And her name too should not be here. It should have
12 been just Dynagrow.

13 MR. BRAFMAN: Just a second, your Honor.

14 (Pause in proceedings.)

15 Q Can you tell me who Steve Cavalli was in 2012?

16 A He was our tax accountant.

17 Q And did he do your personal tax work as well?

18 A Yes.

19 Q And can you tell me, who was Johannah Olsher?

20 A She was an admin who worked for me and Sarah.

21 Q Now, do you know how this document -- what caused this
22 document to arrive?

23 A This particular document?

24 Q Yes.

25 A I don't know.

F. Hassan - Cross - Brafman

1407

1 Q Was it at the request of your assistant that caused it to
2 arrive?

3 A Sometimes my understanding is that this is a little bit
4 like a form that either one party sends in or the other party
5 looks for, but it's supposed to be filed with the taxes.

6 Q But this document, if you recall -- and if you don't,
7 tell me -- was specifically requested on behalf of you and
8 Sarah by your administrative assistant Johannah Olsher because
9 you needed to file your tax return; isn't that correct?

10 A Yes, probably.

11 Q And why would your executive assistant ask for a K-1 for
12 you if you were not an investor in Retrophin?

13 MS. KASULIS: Objection, your Honor.

14 THE COURT: Sustained.

15 MR. BRAFMAN: Your Honor, he said --

16 Q Well, do you know whether this was requested by your
17 administrative assistant?

18 A If it was requested by my administrative assistant, she
19 was also working for Sarah.

20 Q Let me save some time. Look at DX 1205 for
21 identification, formerly Government 103-16.

22 Can you read that e-mail chain to yourself, please?

23 A Should I read all these e-mails?

24 Q Yes. Please start from the back and work your way
25 forward from the last one.

F. Hassan - Cross - Brafman

1408

1 A This comes from Fred Hassan to Martin Shkreli --

2 MS. KASULIS: Your Honor.

3 Q I'm not asking you to read it out loud, I'm asking you to
4 read it to yourself.

5 A Oh, okay.

6 (Pause in proceedings.)

7 A Yes.

8 Q Am I correct that reading this document refreshes your
9 recollection that the document was requested by your
10 accountant?

11 A It doesn't refresh my recollection, but this is exactly
12 what happened.

13 Q Your accountant requested it, correct?

14 A Yeah, he was -- it was in October. October 15 was the
15 deadline, so --

16 Q And what your accountant asked Mr. Shkreli to provide is
17 the K-1 for Retrophin, telling him he needed it immediately
18 because you had to travel and you had to sign your tax return
19 before you traveled; isn't that correct?

20 MS. KASULIS: Objection.

21 THE COURT: Sustained, sustained.

22 Q Do you remember how this came about, that this document
23 came to your office?

24 A I don't remember.

25 Q Does reading this document -- look at the e-mail on

F. Hassan - Cross - Brafman

1409

1 October 9 -- refresh your recollection that Steve Cavalli
2 asked for it?

3 A He wanted the documents completed.

4 Q Because you had to travel, correct?

5 A That's what the documents say.

6 Q Were you going away at that time?

7 A I don't remember what I was doing, but I travel a lot.

8 Q And why would you have to sign a tax return or a K-1 or a
9 tax return for an investment in Retrophin if you weren't an
10 investor?

11 A I have no idea what these documents were for, but
12 typically K-1s have to be filed before the end of the year.

13 I do notice here, by the way, that there are very
14 strong instructions not to have my name anywhere since I'm not
15 an investor.

16 Q I understand that and we'll get to that point.

17 But originally you're the accountant, your tax
18 advisor, asked for this document because he believed you had
19 to sign it; is that correct?

20 MS. KASULIS: Objection, your Honor.

21 THE COURT: Sustained.

22 MR. BRAFMAN: Your Honor, he read from the document
23 when it helped the Government just a minute ago.

24 MS. KASULIS: Objection.

25 MR. BRAFMAN: Can I offer this into evidence?

F. Hassan - Cross - Brafman

1410

1 THE COURT: You're arguing with me.

2 MR. BRAFMAN: I'm not, your Honor.

3 THE COURT: It's bad enough you argue with the
4 witness, sir. Don't argue with me either.

5 MR. BRAFMAN: I won't argue with you, your Honor.

6 THE COURT: All right.

7 Q Do you recognize these materials that --

8 THE COURT: The question's frame was improper, so
9 I'm sustaining the objection.

10 MR. BRAFMAN: Yes, your Honor.

11 THE COURT: You were asking whether or not he could
12 intuit what his account believed, and you need to rephrase
13 phrase.

14 MR. BRAFMAN: Yes, Judge.

15 Q In the e-mail from your accountant to Mr. Shkreli, do you
16 understand from reading the e-mail that he wanted you to sign
17 your tax return before you left?

18 A At one point, it does say I need to sign my tax return,
19 yes.

20 Q And the subject was the Retrophin K-1; is that correct?

21 A Yes.

22 Q Mr. Cavalli has been with you for a number of years,
23 correct?

24 A Yes.

25 Q And he does all of your tax work?

F. Hassan - Cross - Brafman

1411

1 A Yes.

2 Q Why would your personal accountant feel that you had to
3 sign the tax return, which included a Retrophin K-1, if you
4 were not an investor?

5 MS. KASULIS: Objection, your Honor.

6 THE COURT: Sustained.

7 Q Do you understand that this document arrived at your
8 office because your accountant requested it?

9 A My accountant wanted these documents done.

10 Q And to get it done before you left so you could sign the
11 return, correct?

12 A That is correct.

13 MS. KASULIS: Objection, your Honor.

14 A However, I don't know why.

15 THE COURT: Sustained.

16 Q When this happened, did you ask Mr. Cavalli: Why did you
17 ask for a K-1 for me to sign?

18 MS. KASULIS: Objection, your Honor.

19 THE COURT: Sustained.

20 Q You were interviewed by the FBI and the Government on
21 January 28, 2016 for the first time; is that correct?

22 A Yes.

23 Q And do you remember going there with your lawyer and
24 meeting with Assistant United States Attorneys and the FBI
25 agents when they interviewed you about your knowledge or

F. Hassan - Cross - Brafman

1412

1 relationship with Mr. Shkreli?

2 A Yes.

3 Q And that was after he had been criminally charged; is
4 that correct?

5 A Yes.

6 Q And it was all over the news when Mr. Shkreli was
7 arrested, correct?

8 A Yes.

9 Q At that meeting, did you talk to the FBI?

10 A They were part of the meeting.

11 Q And before you sat down and talked to them, did you
12 execute any kind of agreement with respect to that meeting?

13 A I do understand that there was some kind of an agreement
14 signed. I relied on my lawyer.

15 Q Let me showed you 3500FH1-1-B and ask if you recognize
16 this document.

17 A Sure. Yes, I do remember this document.

18 Q And it has your signature on the back?

19 A Yes.

20 Q And it has the signature of your lawyer?

21 A Yes.

22 Q And it has the signature of several prosecutors -- one of
23 them Ms. Smith -- and two FBI agents, correct?

24 A Yes.

25 Q And you understood that this was a document that provides

F. Hassan - Cross - Brafman

1413

1 you with some protection in connection with the statements you
2 would be making in the U.S. Attorney's Office, correct?

3 A Yes. My lawyer said.

4 Q I understand you had a lawyer with you. But on the
5 second page, you verify that you read --

6 MR. BRAFMAN: I'm offering it into evidence, your
7 Honor.

8 MS. KASULIS: Objection.

9 THE COURT: Sustained.

10 MR. BRAFMAN: Your Honor I would like a sidebar.

11

12 (Continued on next page.)

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Sidebar

1414

1 (The following occurred at sidebar.)

2 MR. BRAFMAN: Your Honor, first, this is a benefit
3 that the witness received from the Government. Not everybody
4 gets a proffer agreement, not everyone signs it and admits
5 that they understood it.

6 Second, when you read his 302, it's almost like zero
7 recollection of virtually half the things we discussed today.
8 I submit that without this document, there is a 1001 violation
9 just based on his testimony, your Honor.

10 MS. KASULIS: Your Honor --

11 MR. BRAFMAN: Let me finish, okay?

12 MS. KASULIS: This is outrageous.

13 MR. BRAFMAN: It is outrageous. What's outrageous
14 is the witness' testimony.

15 I believe that the jury has a right to infer that
16 this witness has not told the whole truth and nothing but the
17 truth today. And I have a right to argue that from the
18 record.

19 THE COURT: Tell me where he's been inconsistent or
20 where he has --

21 MS. KASULIS: Right.

22 THE COURT: -- based on the 302.

23 MR. BRAFMAN: Your Honor, I don't have to leave it
24 just for the 302. I had no intention of doing this, but this
25 witness has made me pull things out of his mouth like I was a

Sidebar

1415

1 dentist on areas where it's absolutely clear that he knew the
2 answer and just didn't want to give it. What you have here is
3 a witness who doesn't want to be involved in saying anything
4 good about Mr. Shkreli in 2017 because he's the dean of the
5 pharmaceutical bar.

6 And as a practical matter, Judge, on a number of
7 occasions we believe that he hasn't been completely truthful.
8 And part of the reason I couldn't produce that was because
9 some of the evidence was circumstantial, some of it is
10 hearsay, some of it relies on Mr. Banta or Mr. Saunders and
11 they may or may not be witnesses.

12 But any time a witness receives a benefit from the
13 Government -- and this is a benefit from the Government -- it
14 is appropriate to question him on the benefit because it
15 allows him to tailor his testimony to some degree. This is
16 not a cooperation agreement, but if it was you certainly would
17 allow me to question him on his cooperation agreement. And I
18 will bring out the fact that it's not a cooperation agreement,
19 but it does provide him with a degree of immunity for false
20 statements, statements is made to the agents at the meeting.
21 And I --

22 THE COURT: It doesn't provide protection for false
23 statements.

24 MR. BRAFMAN: Not false statements --

25 THE COURT: You just said that.

Sidebar

1416

1 MR. BRAFMAN: I withdraw that.

2 THE COURT: Slow down.

3 MR. BRAFMAN: It's false. This is their view that
4 he's telling the truth. I don't believe he's telling the
5 truth. And the fact that he has an agreement that prevents
6 them from prosecuting him for anything he said in the U.S.
7 Attorney's Office is something I'm allowed to explore.

8 THE COURT: But you have to show where the
9 inconsistency is. What did he say in the 302 that contradicts
10 what he's saying on the stand?

11 MR. BRAFMAN: Your Honor, most of the things he
12 identified here he had no recollection of when he was shown
13 those documents in the 302. And if you look at the 302, he
14 probably says at least a dozen times: I have no recollection
15 of ever seeing this document.

16 MS. KASULIS: He's been saying that he has no
17 recollection the entire time he's testified.

18 MR. BRAFMAN: Yes. And then when we showed him the
19 document and we pulled it out of him --

20 MS. KASULIS: No, you didn't pull it out of him.
21 You showed him a document and had him read from a document.

22 MR. BRAFMAN: The same documents that you showed him
23 and he tells me he doesn't remember them.

24 MS. KASULIS: He doesn't know, as he's said here.

25 MR. BRAFMAN: You can't make a judgment on this

Sidebar

1417

1 record, most respectfully, as to whether or not this witness
2 in his mind is relying on this document to feel free to say
3 whatever he thinks is appropriate.

4 MS. SMITH: Your Honor, for the record, in the
5 proffer agreement, the carve-out is for false statements. So,
6 if he lied to us in that proffer session, that's why it's
7 called a --

8 MR. BRAFMAN: Then you --

9 MS. SMITH: -- king for a day, number one. And
10 number two, it doesn't give him any coverage for anything that
11 he says on the stand.

12 MR. BRAFMAN: So you won't be able to do that on
13 redirect.

14 MS. SMITH: No.

15 MS. KASULIS: No.

16 He has not proven there's any inconsistency from
17 what Mr. Hassan said in that meeting. He has not done that,
18 not one time. He's just saying the man doesn't remember.
19 It's exactly what he said in these meetings.

20 What Mr. Brafman has been doing is putting documents
21 in front of him and have him read from it and he's saying he
22 doesn't remember.

23 MR. BRAFMAN: Your Honor, if you read his 302 --

24 MS. KASULIS: If you want to make argument to the
25 jury that you don't believe him, you can do that. You're

1 saying things like Banta and Saunders. That is not evidence
2 in this court.

3 It's how you feel. That's a completely
4 inappropriate thesis --

5 MR. BRAFMAN: Your Honor, I don't want to belabor
6 the issue because the hour is late. I believe I have a
7 perfect right to question him about the fact that he signed
8 the proffer agreement, which he read and agreed to and said he
9 fully understood. And if they want to probe him on redirect
10 to show he has no immunity from making a false statement, God
11 bless them.

12 THE COURT: The agreement says clearly that if you
13 make a false statement, you can be prosecuted.

14 MR. BRAFMAN: If he makes a false statement in their
15 judgment. Same thing that's in a cooperation agreement: If
16 in the opinion of the Government the witness has lied or
17 otherwise not lived up to the agreement.

18 I've done this cross so many times --

19 MS. KASULIS: That's a cooperator.

20 MR. BRAFMAN: Your view of who is and is not the
21 cooperator doesn't carry the weight.

22 THE COURT: There are many different kinds of
23 agreements. But one is a proffer agreement, which has quite a
24 number of obligations on the part of the witness. And there's
25 a proffer agreement which is really I think to ensure that a

Sidebar

1419

1 witness is going to tell the truth and warning him or her that
2 if they don't, they could be prosecuted.

3 So, I think to try to confuse the jury --

4 MR. BRAFMAN: Your Honor.

5 THE COURT: I don't want the jurors to get confused.

6 MR. BRAFMAN: There are 75 witnesses in this case
7 who came in, did testimony, gave interviews, and they didn't
8 get proffer agreements.

9 MS. KASULIS: Yes, they did.

10 MR. BRAFMAN: No, they didn't.

11 MS. KASULIS: Many of them asked for it and they
12 did.

13 MR. BRAFMAN: You haven't produced it.

14 MS. KASULIS: Yes, we have, Ben.

15 MS. SMITH: Any witness who asked for one got one.

16 MR. BRAFMAN: Anyone who asked for one got one?

17 MS. SMITH: If their lawyer asked for it. Most of
18 them don't have any idea of whether they should be or should
19 not be asking.

20 MR. BRAFMAN: Are you precluding me from doing this
21 cross?

22 THE COURT: No, I'm not precluding you from doing
23 the cross, but I'm precluding from putting in this 3500
24 material, the 302, regarding his statement.

25 You can cross-examine him. You can ask him whether

Sidebar

1420

1 he signed a proffer agreement and if he understands what the
2 proffer agreement provided. I understand he says he relied on
3 his lawyer's advice in signing the document. Whether he
4 understands anything more than that, I don't know.

5 MR. BRAFMAN: Thank you.

6

7 (Continued on next page.)

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F. Hassan - Cross - Brafman

1421

1 (Sidebar ends; in open court.)

2 BY MR. BRAFMAN:

3 Q Mr. Hassan, we're not going to offer the document into
4 evidence but I'm going to refer you to it in case you have to
5 refresh your recollection. And I'm referring to 3500FH1-1-B,
6 which you acknowledge bears your signature and the signature
7 of your lawyer. Do you have it in front of you?

8 A Yes.

9 Q And in pertinent part, did you understand this agreement
10 when you signed it?

11 A As well as I could. I'm a lay person, not a lawyer.

12 Q But you're a pretty well-educated individual.

13 A Quite good in some areas. I don't understand legal stuff
14 too well.

15 Q But you've verified that you read the agreement and
16 discussed it with the attorney and you understand all of its
17 terms and you entered into it knowingly and voluntarily; is
18 that correct?

19 A Yes, but relying heavily on the attorney.

20 Q I understand.

21 I want to refer you to Paragraph 2, and I want to
22 ask you, sir -- I'm not going to read it, I'm just going to
23 ask you did you understand that as a result of signing this
24 agreement, that the Government could not use any evidence
25 against you in the event that there was a case made against

F. Hassan - Cross - Brafman

1422

1 you?

2 MS. KASULIS: Objection.

3 THE COURT: Sustained.

4 Q Read Paragraph 2 and tell me what you understood.

5 THE COURT: Read it to yourself.

6 Q Read it to yourself and tell me what you understood.

7 (Pause in proceedings.)

8 A I do get a rough idea of what this means.

9 Q Tell me.

10 A It says if you say something that is blatantly or
11 willfully false, then that's not going to protect you.
12 Otherwise, you are partially protected based on what you tell
13 the Government. I think that's basically what it's saying
14 here.

15 Q I'm sorry, I didn't follow. Are you protected that they
16 can't use anything you tell them in that office during this
17 meeting against you?

18 MS. KASULIS: Objection.

19 THE COURT: Sustained.

20 Q Unless you lie, they can't use anything you tell them
21 against you in any prosecution; correct?

22 A Roughly, that's the idea. Unless there's something
23 willful, a willful lie, yes.

24 MR. BRAFMAN: I have nothing further. Thank you
25 sir.

F. Hassan - Cross - Brafman

1423

1 THE COURT: Do you have redirect?

2 MS. KASULIS: Yes, I do, your Honor.

3 REDIRECT EXAMINATION

4 BY MS. KASULIS:

5 Q Good afternoon, Mr. Hassan.

6 A Good afternoon.

7 Q I want to refer you back to Government Exhibit DX 1205.

8 Do you have it there in front of you?

9 A Yes.

10 Q Do you recognize this e-mail chain?

11 A Yes.

12 Q Are you a recipient of the e-mail at the top of this
13 chain?

14 A Yes.

15 MS. KASULIS: The Government moves this exhibit unto
16 evidence, your Honor.

17 MR. BRAFMAN: Can I just see which one they're
18 talking about, Judge?

19 MS. KASULIS: It's you're exhibit, DX 1205.

20 MR. BRAFMAN: I know. I'm just trying to find it.
21 Give me the number again, please.

22 MS. KASULIS: DX 1205.

23 MR. BRAFMAN: Give me one second. I'm a little out
24 of order here in the sequence.

25 (Pause in proceedings.)

F. Hassan - Cross - Brafman

1424

1 Your Honor, I offered this and they objected.

2 THE COURT: No sir, you did not offer it. You used
3 it to refresh the witness' recollection.

4 MR. BRAFMAN: I have no objection.

5 THE COURT: We will admit Defendant's Exhibit 1205
6 in evidence without objection.

7 (Defendant's Exhibit 1205 so marked.)

8 MS. KASULIS: Thank you.

9 THE COURT: You may publish.

10 MS. KASULIS: Thank you, your Honor.

11 (Exhibit published to the jury.)

12

13 (Continued on next page.)

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Hassan - redirect - Kasulis

1425

1 (Continuing.)

2 THE COURT: Do you have it, sir?

3 THE WITNESS: Yes.

4 BY MS. KASULIS:

5 Q Do you have that in front of you, Mr. Hassan?

6 A Yes.

7 Q Do you recall that Mr. Brafman was asking you about a K-1
8 document that had Sarah, Dynagrow and Fred Hassan on it? Do
9 you recall that?

10 A Yes.

11 Q And do you recall that you discussed on cross-examination
12 that you used a tax preparer named Steve Calvelli; is that
13 right?

14 A That's correct.

15 Q And also you testified that you used an administrative
16 assistant Ms. Johanna Olsher; is that right?

17 A At that time she was my admin, my administrative
18 assistant, yes.

19 Q Let's take a minute to go through this exhibit that
20 Mr. Brafman used to refresh your recollection. At the bottom
21 of the second page, it's the first e-mail in this chain. It
22 appears to be from you. That's your e-mail address; is that
23 right, Mr. Hassan?

24 A That is correct.

25 Q And it's dated October 8, 2012, to Mr. Shkreli; is that

Hassan - redirect - Kasulis

1426

1 right?

2 A Yes.

3 Q And the subject is "K-1 tax form from Retrophin"; is that
4 correct?

5 A Yes.

6 Q And if you look at the next page it's, "Dear
7 Mr. Shkreli," and the rest of the e-mail is at the top of the
8 page. "Neither of the Hassans or Sara Hassan have received
9 the K-1 tax form for Retrophin. It is the last document the
10 Hassans need before they file their tax return. Can you help
11 me get this form, please? Thank you." And it's signed by
12 Johanna Olsher; is that right?

13 A Yes.

14 Q Does this e-mail appear to be from your assistant,
15 Johanna Olsher --

16 A Yes.

17 Q -- to Mr. Shkreli?

18 A Yes.

19 Q And she is using your e-mail address to send this e-mail?

20 A That is correct.

21 Q If we look at the response, Mr. Shkreli writes, "Yes.

22 You will receive K-1s today or tomorrow." Do you see that?

23 A Yes.

24 Q And then farther up in the chain, again this appears to
25 be your e-mail address, but, again, this appears to be signed

Hassan - redirect - Kasulis

1427

1 by Johanna Olsher; do you see that?

2 A Yes.

3 Q She writes, "Mr. Shkreli, Mr. Hassan needs to sign his
4 tax return on Thursday before he begins traveling on Friday.
5 Would you be able to scan the tax form directly to his
6 accountant? I'm copying him on this e-mail," and then she
7 lists here Mr. Calvelli's information; is that right?

8 A Yes.

9 Q And then she writes, "Would you mind sending me the phone
10 number? All I seem to have is your e-mail address," and she's
11 saying that to Mr. Shkreli; is that right?

12 A Yes.

13 Q So your assistant doesn't have Martin Shkreli's phone
14 number, does she?

15 A No.

16 Q She only has his e-mail address?

17 A That is right.

18 Q And she has access to your contact information; is that
19 right?

20 A Yes. And customarily most calls she would put through
21 for me so she would have access to phone numbers.

22 Q And is Ms. Olsher an accountant, Mr. Hassan?

23 A Johanna Olsher is she an accountant?

24 Q Are you aware of whether Ms. Olsher is an accountant?

25 A I'm not aware of that.

Hassan - redirect - Kasulis

1428

1 Q Is she a tax preparer?

2 A No, she is not.

3 Q Does she prepare your taxes?

4 A I know for sure she does not.

5 Q And so in response it appears that Mr. Shkreli responds
6 "Yes" and then lists here his phone number. Do you see that?

7 A Yes.

8 Q And the e-mail chain continues on the next page, the
9 first page of this document, where again it appears that
10 Johanna Olsher is signing this next e-mail, again using your
11 e-mail address and says, "Dear Mr. Shkreli: Thank you for
12 sending us a copy of the K-1 tax return. Please note for the
13 future, it should be addressed to Sara Hassan care of Dynagrow
14 Capital. Fred Hassan's name should not be on the documents.
15 Please confirm back to me that you are able to make this
16 change. Thank you for your assistance."

17 And she CCs Mr. Calvelli on this e-mail; isn't that
18 right?

19 A Yes.

20 Q And then in response Mr. Shkreli acknowledges
21 Ms. Olsher's e-mail; is that right?

22 A Yes.

23 Q And she states, "I just want to make sure Fred's name
24 should not be on the document whatsoever. We can make that
25 change."

Hassan - redirect - Kasulis

1429

1 Is it your understanding that the Fred that
2 Mr. Shkreli is referring to here is you, Mr. Hassan, Fred
3 Hassan?

4 A Yes.

5 Q And in response Mr. Calvelli -- who is your tax preparer;
6 is that right?

7 A Yes.

8 Q -- states to Martin Shkreli and yourself, "Martin, please
9 eliminate Fred's name. The investment is owned by a family
10 partnership named Dynagrow and Sarah is the manager. Thanks.
11 And it's signed by Steve Calvelli.

12 Do you see that, Mr. Hassan?

13 A Yes.

14 Q Now we heard a lot on cross-examination about your
15 relationship with Mr. Shkreli, about whether you had e-mail
16 correspondence with him, whether you served as a reference for
17 him.

18 Do you consider yourself to be a close friend of
19 Mr. Shkreli?

20 MR. BRAFMAN: Objection. I didn't say that on
21 cross.

22 MS. KASULIS: I'm asking my own question now.

23 THE COURT: Let's stay within the bounds of cross,
24 Ms. Kasulis.

25 BY MS. KASULIS:

Hassan - redirect - Kasulis

1430

1 Q Do you consider yourself to be close to Mr. Shkreli?

2 MR. BRAFMAN: Objection Your Honor.

3 THE COURT: Overruled.

4 A No.

5 Q And do you consider yourself to be an advisor to
6 Mr. Shkreli?

7 A No.

8 Q Have you given him permission to use your name as a
9 reference?

10 A No.

11 Q Would you expect if someone was going to use your name as
12 a reference, they would ask you permission first to do that?

13 MR. BRAFMAN: Objection, Your Honor.

14 THE COURT: Overruled.

15 A Yes. They would normally -- they would -- it's the right
16 way of doing it; first ask for permission to use as a
17 reference.

18 Q And did you give Mr. Shkreli permission to use your name
19 as a reference at any point in time, sir?

20 A No.

21 Q Who is Francois Maison Rouge?

22 A He is a senior person, very senior person, at an
23 investment banking firm -- it's a big financial services firm
24 called Evercore Capital Advisors. It's a big firm. They do a
25 lot of work in New York.

Hassan - redirect - Kasulis

1431

1 MS. KASULIS: May I approach, Your Honor?

2 THE COURT: Yes, you may.

3 Q I'm showing you what's been newly marked as Government
4 Exhibit 103-40.

5 MS. KASULIS: I'm going to show it to you now,
6 Mr. Brafman.

7 Q You can take a minute to review this document,
8 Mr. Hassan.

9 A Yes, I have.

10 Q Do you recognize this document?

11 A Yes.

12 Q What is it?

13 A It's an e-mail from Francois Maison Rouge to me.

14 MR. BRAFMAN: Objection. If we're going to offer
15 it, I would ask for a sidebar.

16 THE COURT: All right.

17 (Continued on next page.)

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1 (The following occurred at sidebar.)

2 MS. KASULIS: Your Honor, Mr. Brafman attacked
3 Mr. Hassan's credibility on cross-examination as serving as a
4 reference for Mr. Shkreli.

5 In this e-mail chain it is clear that Mr. Shkreli is
6 using Mr. Hassan's name as a reference in trying to solicit
7 business from Francois Maison Rouge and it is after the time
8 period that his daughter had invested and withdrawn the money
9 and gotten the money.

10 Mr. Hassan thanks Mr. Maison Rouge and then
11 Mr. Saunders acknowledges that he, himself, had nothing to do
12 with this and therefore under the rules of evidence, in order
13 to rehabilitate the declarant's credibility when attacked on
14 other grounds, we say this is not hearsay and this should be
15 admitted for the purpose of rehabilitating his credibility.

16 MR. BRAFMAN: There's a relevance issue.

17 Mr. Shkreli is already fired from Retrophin or resigned from
18 Retrophin in December, but it was certainly after she got her
19 money back. This is the kind of hearsay that they objected
20 from me using whenever we wanted to offer something said by
21 someone else. This is being admitted for the truth of it.

22 THE COURT: She is using this to rehabilitate the
23 witness which is a different means by which you can permit an
24 exhibit on evidence.

25 You attacked his credibility in terms of questioning

Sidebar

1433

1 him on cross whether he was allowing Mr. Shkreli to use him as
2 a reference or describe him as a mentor or positive things
3 about him and this is what? Give me the number.

4 MS. SMITH: Its Rule 801(d)(1)(b)(2). And it's
5 rehabilitating declarant's credibility. So it is not hearsay.
6 Alternatively, under 801(d)(1)(b)(1), it's rebutting the
7 charge that Mr. Brafman made on cross that he recently
8 fabricated that he doesn't know --

9 MR. BRAFMAN: We're not rehabilitating the declarant
10 here. Mr. Hassan is not -- the declarant is Mr. Shkreli or
11 it's Francois is the one who's the declarant. He hasn't been
12 attacked. The key piece of information is Francois. He's not
13 the declarant of this e-mail.

14 MS. KASULIS: The purpose of this document is to
15 show that Mr. Shkreli was using Mr. Hassan as a reference when
16 he had not been given permission to do that and you attacked
17 him, sir.

18 MR. BRAFMAN: The declarant testifies on the subject
19 of cross-examination. That's Francois.

20 THE COURT: This declarant, Mr. Hassan, is saying
21 "Thanks for the heads up."

22 MR. BRAFMAN: But the "thanks for the heads up" is
23 meaningless unless you get the declarant from --

24 MS. SMITH: Under Rule 106 for completeness --

25 THE COURT: Sir, these are the rules.

Sidebar

1434

1 MR. BRAFMAN: I understand the rules, Your Honor.

2 THE COURT: I am sure you know them better than
3 anyone in this courthouse or my courtroom I should say. I am
4 not speaking for my colleagues, dare I not, but Martin Shkreli
5 is making a statement and Mr. Maison Rouge then gives
6 Mr. Hassan notice that this is -- that his name is being used
7 by Mr. Shkreli still invoking the name and Mr. Hassan replies
8 "Thanks for the heads up."

9 So the context of this, the statement of the
10 declarant who has been attacked vigorously which is what you
11 should be doing on cross, this allows the Government to use
12 this document.

13 MR. BRAFMAN: They can do it the same way you asked
14 me to do it. You can ask him did you ever receive indication
15 that Mr. Shkreli was using your name, yes, I got -- I received
16 information and I told him that I had nothing to do with it.

17 THE COURT: There is a rule that allows for
18 admission of this.

19 MR. BRAFMAN: Saunders' name is in here. His two
20 cents needs to be redacted.

21 MS. KASULIS: We'll redact Mr. Saunders.

22 THE COURT: We will redact that.

23 MR. BRAFMAN: "Thanks for the heads up" is fine.

24 MS. SMITH: We'll fold it down and we'll do a
25 cleaner version.

Sidebar

1435

1 (Sidebar ends.) (Continued on next page.)
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Hassan - redirect - Kasulis

1436

1 MS. KASULIS: Your Honor, the Government moves
2 103-40 with the top portion folded down into evidence as we
3 discussed.

4 MR. BRAFMAN: There's an objection whether redacted
5 or not, but as redacted --

6 MS. KASULIS: As redacted.

7 THE COURT: We will admit Government 103-40 with the
8 last or top e-mail in this series redacted.

9 (Government's Exhibit 103-40 received in evidence.)

10 THE COURT: You may publish, ma'am.

11 (Exhibit published.)

12 Q Mr. Hassan, do you see this first e-mail here?

13 A Yes.

14 Q And it appears to be from Martin Shkreli dated December
15 9, 2014. Do you see that?

16 A Yes.

17 Q And it's to the individual who we just spoke about,
18 Francois Maison Rouge. Do you see that?

19 A Yes.

20 Q With the subject being "Martin Shkreli/Turing
21 Pharmaceuticals"?

22 A Yes.

23 Q And then Mr. Shkreli writes, "Hello, Francois," and it's
24 only to Mr. Maison Rouge; is that right?

25 A That is correct.

Hassan - redirect - Kasulis

1437

1 Q And then he writes, "Hello, Francois. I hope you are
2 doing well. We met briefly at the Palace Hotel a year or two
3 ago. I am a close friend of Brent Saunders and Fred Hassan,
4 the founder of Retrophin.

5 "I started a new business, Turing Pharmaceuticals AG
6 recently. We are based in New York and in Basel. I would
7 love to catch up with you even for five minutes on some of the
8 activity we are doing. I have a large pool of capital and
9 your relationships and advice could come in handy with the
10 specific deal we are in the throes of at the moment."

11 And it's signed by Mr. Shkreli; is that right?

12 A Yes.

13 Q In this next e-mail which appears to be forwarded to you,
14 Mr. Francois Maison Rouge writes, "Gosh, still invoking your
15 name. See below," and he sends this to you and you respond on
16 Tuesday, December 9, 2014 CC'g Mr. Saunders and saying,
17 "Francois, thanks for the heads up. Fred."

18 A Yes.

19 Q Did Mr. Shkreli ever give you -- did you ever give
20 Mr. Shkreli permission to use your name in soliciting Francois
21 may?

22 A No.

23 Q For a meeting?

24 A No.

25 Q Of any kind?

Hassan - redirect - Kasulis

1438

1 A No.

2 Q Do you consider yourself to be a close friend of
3 Mr. Shkreli?

4 A No.

5 Q Do you have an understanding as to why Mr. Maison Rouge
6 forwarded this e-mail to you?

7 A Yes.

8 Q What is your understanding, sir?

9 A He had called me at some time earlier on to alert me to
10 the fact that Mr. Shkreli was using my name for some work,
11 some fundraising that he was trying and he called me to just
12 tell me he was surprised that this was going on.

13 I didn't have any concrete evidence so I didn't do
14 anything about it.

15 Q And does this -- sir, is this concrete evidence to you
16 that Mr. Shkreli was using your name without permission to
17 solicit meetings or business for himself?

18 A Yes. He called me to do just -- to warn me because he's
19 somebody I've known for many years, that this -- this is going
20 on where your name is being used.

21 Q And this e-mail here, sir, is this evidence to you that
22 Mr. Shkreli was using your name without permission?

23 MR. BRAFMAN: Objection.

24 THE COURT: Overruled.

25 A No, this e-mail is just saying that here is another

Hassan - recross - Brafman

1439

1 example of the same problem.

2 Q So it is, in fact, an example of Mr. Shkreli using your
3 name without your permission?

4 A Yes.

5 Q Thank you.

6 MS. KASULIS: No further questions, Your Honor.

7 MR. BRAFMAN: Can I have a brief recross on this?

8 THE COURT: Of course.

9 MR. BRAFMAN: Leave the document there, please.

10 MS. KASULIS: Sure.

11 RECROSS-EXAMINATION

12 BY MR. BRAFMAN:

13 Q If you can look at this document just so we're clear.
14 Mr. Shkreli writing to Francois says, "I am a close friend of
15 Brent Saunders and Fred Hassan." He's including Mr. Saunders
16 in that; is that correct?

17 A Yes.

18 Q Do you know if Mr. Shkreli was, in fact, a close friend
19 of Brent Saunders at the time?

20 A I don't know the extent of their relationship.

21 Q And it was Brent Saunders who originally introduced
22 Mr. Shkreli to your daughter and your family; correct?

23 A Yes.

24 Q So what he is doing is saying to Francois that he is a
25 close friend of Brent Saunders and you, and he was telling him

Hassan - recross - Brafman

1440

1 he's the founder of Retrophin and he's signing it not on
2 behalf of is Retrophin but Turing Pharmaceuticals; is that
3 right?

4 A Yes.

5 Q And if we could look at what's noted as Defendant's
6 Exhibit 1202 which is the schedule of meetings on January 11,
7 2011. Do you remember seeing this?

8 A The earlier one?

9 Q Do you see it? Do you have it?

10 A Yes, yes.

11 Q Do you remember we went into this on cross-examination?

12 A Yes.

13 Q At 4:15 to 4:45 you met with Martin Shkreli at MSMB
14 Capital in the Clift Hotel at the concierge desk. Do you see
15 that?

16 A Yes.

17 Q And right after that meeting, beginning at the minute
18 that meeting ends, you have listed here, "Say hello to
19 Francois Maison Rouge at the Clift Hotel." Do you see that?

20 A Yes.

21 Q Do you know whether or not you introduced Mr. Shkreli to
22 Maison -- Francois at that meeting on that date?

23 A I don't believe so.

24 Q You said you don't have any recollection of even meeting
25 with Mr. Shkreli?

Hassan - recross - Brafman

1441

1 MS. KASULIS: Objection, Your Honor.

2 THE COURT: Sustained.

3 Q Did you remember the meeting with Mr. Shkreli on that
4 date where you met him for a half an hour on January 11,
5 2011?

6 A That first meeting which my daughter arranged, yes, I do
7 remember that.

8 Q Did you remember talking to him at that meeting?

9 A I don't remember the contents of the conversation, I --

10 Q Do you remember who was there?

11 MS. KASULIS: Objection, Your Honor, asked and
12 answered.

13 THE COURT: Sustained.

14 MR. BRAFMAN: Excuse me, what was the objection?

15 MS. KASULIS: It was asked and answered.

16 MR. BRAFMAN: But we're getting a clarification now
17 as to his recollection.

18 BY MR. BRAFMAN:

19 Q Do you know whether or not Mr. Francois Maison Rouge was
20 introduced to Mr. Shkreli the minute your meeting ended?

21 MS. KASULIS: Objection. Introduced to --

22 THE COURT: Sustained.

23 BY MR. BRAFMAN:

24 Q Do you think this is just a coincidence that you and
25 Mr. Shkreli are meeting at 4:45 and the next person you're

Hassan - recross - Brafman

1442

1 meeting at the same hotel in the same place minutes after is,
2 "Say hello to Francois Maison Rouge"?

3 A From everything I know, it looks like a coincidence
4 because Francois Maison Rouge typically had a suite where he
5 would host people who would come and go and, so, I did meet
6 Mr. Shkreli somewhere outside, somewhere near the concierge
7 desk and it's unlikely that he would have come out of the room
8 to meet me. Also the original letter said Palace Hotel and
9 this is the Clift Hotel. It's likely that there was a
10 coincidence here.

11 Q Just a coincidence?

12 A It looks like it.

13 Q Okay. Now --

14 THE COURT: May I make a clarification for the
15 record, sir? I think you referred to Defendant's Exhibit
16 1202. This, in fact, is Defendant's Exhibit 1200.

17 MR. BRAFMAN: You are right. No, I have it as 1202,
18 Judge. It is the calendar entry for January 10, 2012.

19 MS. KASULIS: No.

20 THE COURT: This is January 11, 2011, sir.

21 MR. BRAFMAN: But the exhibit is on the front page
22 which is the meeting organizer.

23 THE COURT: My point is that we're talking about two
24 different years in January of 2011.

25 MR. BRAFMAN: Yes.

Hassan - recross - Brafman

1443

1 THE COURT: That's what is reflected in Defendant's
2 Exhibit 1200. And in Defendant's Exhibit 1202, the year is
3 January 10, 2012. It's a different year.

4 MR. BRAFMAN: The one that I'm referring to
5 unfortunately has the cover page 1202, but I'm specifically
6 referring to January 11, 2011 for this reference.

7 THE COURT: I believe you referred to it as 1202
8 and, in fact, it is 1200.

9 MR. BRAFMAN: I was reading the exhibit sticker and
10 I'm changing it to make it accurate.

11 THE COURT: Mine is accurate, sir.

12 MR. BRAFMAN: I trust you.

13 BY MR. BRAFMAN:

14 Q Now, Ms. Kasulis just a minute ago read the e-mail chain
15 now in evidence as DX 1205 which relates to the K-1s. Do you
16 remember that, sir?

17 A Yes.

18 Q Do you have it with you, sir?

19 A Yes.

20 Q All right. I want to start from the back just the way
21 she did and I'm going to put it up on the screen and mine is
22 marked, but I was going to circle it anyway so it doesn't have
23 comments. It just has red marking and I'll put on the second
24 page on the bottom where it begins.

25 On the bottom of that page, there is an e-mail from

Hassan - recross - Brafman

1444

1 Fred Hassan to Mr. Shkreli dated October 8th, 2012; correct?

2 A Yes.

3 Q And it's signed by your administrative assistant or your
4 executive assistant Johanna Olsher; correct?

5 A Yes.

6 Q And it says "Executive assistant to Fred Hassan."

7 A Yes.

8 Q Now, she's the one who actually wrote this e-mail for
9 you; correct?

10 A Either she wrote it for me or for Sarah or she wrote it
11 on her own. I don't know.

12 Q How long has she worked for you?

13 A Before that? She started in late '09.

14 Q Okay.

15 A So.

16 Q And this e-mail is in 2012, so she's been working for you
17 for three years?

18 A Yes.

19 Q And she says, "Neither the Hassans nor Sarah Hassan have
20 received K-1 tax forms from the Retrophin. It is the last
21 form the Hassans," plural, "need before they file the tax
22 return. Can you help me get this form, please."

23 Am I correct?

24 A Yes, that's what it says.

25 Q And what information would she be using to send an e-mail

Hassan - recross - Brafman

1445

1 asking for a K-1 that included not just Sarah Hassan and not
2 Dynagrow but the Hassans, meaning you and your wife I assume,
3 and Sarah --

4 MS. KASULIS: Objection.

5 Q -- what information could she be relying on to draft that
6 e-mail?

7 MS. KASULIS: Objection.

8 THE COURT: Sustained.

9 Q What do you understand her to be asking for; your K-1 or
10 Sarah's or both?

11 A I think someone asked her to send this reminder to Martin
12 Shkreli to get the paperwork in for the end of the year.

13 Q Now, go back if you could to your accountant.

14 How long has he been your accountant?

15 A Quite a long time. Over ten years.

16 Q And he's the one who gets all of your tax documents and
17 prepares your tax return; correct?

18 A That is correct.

19 Q And he sends you the following e-mail, "Mr. Hassan needs
20 to sign his tax return on Thursday before he begins traveling
21 again on Friday. Would you be able to scan the tax form
22 directly to his accountant? I am copying him on this e-mail."

23 Who is that e-mail from, your secretary?

24 A Yes, it's from my admin.

25 Q So she is sending it to the accountant indicating that

Hassan - recross - Brafman

1446

1 you need to sign your tax return before you leave and she
2 wants it to be scanned immediately?

3 A I think she's asking Martin Shkreli to get in touch
4 directly with my accountant.

5 Q Yes. But do you know why she would believe that you had
6 to sign your tax return and get a K-1 from Retrophin if you
7 have nothing to do with Retrophin?

8 MS. KASULIS: Objection.

9 THE COURT: Sustained.

10 (Continued on next page.)

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F. Hassan - cross - Brafman

1447

1 CROSS-EXAMINATION

2 BY MR. BRAFMAN: (Continuing)

3 Q Now, ultimately your accountant tells them never again
4 put Fred Hassan's name on the K-1; correct?

5 A Yes.

6 Q Did you ever get another K-1 that has your name on it?

7 A I don't know.

8 Q Thank you.

9 THE COURT: Is there any redirect?

10 MS. KASULIS: No, Your Honor.

11 THE COURT: Sir, you are excused. Thank you for
12 your time. Have a nice weekend.

13 THE WITNESS: Can I leave these here?

14 THE COURT: All the documents may be left there.

15 You can take your water with you, however.

16 MS. KASULIS: Your Honor, we can call a next
17 witness.

18 MR. BRAFMAN: Your Honor, can we have a quick
19 sidebar?

20 THE COURT: Yes, sir, of course.

21 (Continued on the next page.)

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Sidebar

1448

1 (Sidebar held outside the hearing of the jury.)

2 MR. BRAFMAN: Your Honor, for a number of reasons
3 I'd ask you to adjourn today, respectfully. It is a quarter
4 of 5:00, I had asked at the beginning at trial to adjourn on
5 Fridays at 5 o'clock, and particularly the day of the eve of
6 the 4th of July weekend. It takes me three hours to get to
7 where I have to travel to. I'm observant and I don't travel
8 on the Sabbath. If I could ask you to accommodate, not as to
9 inconvenience the Court, but I have to get going where I have
10 to be, and I am exhausted.

11 THE COURT: You speak for all of us on that.

12 MS. SMITH: Unfortunately, our next witness is from
13 Texas.

14 MR. KAPLAN: He has to come back anyway.

15 MS. SMITH: I would like to get him on and off, but
16 cross is going to be three-and-a-half hours. Just given that,
17 it is going to take us -- and we had two other witnesses for
18 today. It is going to take us -- we have to reshuffle
19 everyone for next week, so we will let defense know who we
20 might call. It may take a day or two to arrange.

21 THE COURT: We have a nice long weekend to sort it
22 all out and be prepared. Can you let them know.

23 MS. SMITH: I am hoping to let them know by
24 tomorrow. It is a matter of our travel division is closed
25 over the weekend.

Sidebar

1449

1 MR. BRAFMAN: Thank you, Judge.

2 THE COURT: Thank you. I will excuse the jurors.

3 (Sidebar ends.)

4 (Continued on the following page.)

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1450

1 THE COURT: Members of the jury, at this time, I
2 will excuse you for the weekend. Please don't talk about the
3 case or expose yourself to any media.

4 As I told you during jury selection and at the
5 beginning, we will not sit on Monday, July 3rd or Tuesday July
6 4th, so you have a nice long weekend. I appreciate your
7 attention here this week. We will continue first thing on
8 Wednesday morning at 9:00 a.m. Please report to the jury
9 room. When you are all here, we will get started immediately.
10 And thank you again. Have a safe and fun weekend.

11 Please leave your notebooks down face down on your
12 chairs. If you don't mind taking your cups and bottles with
13 you, we would be grateful.

14 (Jury exits the courtroom.)

15 THE COURT: Thank you. Have a good weekend
16 everyone.

17 MR. BRAFMAN: Thank you, Your Honor. Thank you very
18 much. You too.

19 THE COURT: I apologize. Juror No. 18 noticed that
20 Mr. Brafman referred to an exhibit as 1130 or something like
21 that, even though it was marked 12, the series is 12. They
22 saw it on the ELMO, I suppose when you put it up. They want
23 to make note this that there is a discrepancy between the
24 exhibit.

25 MR. BRAFMAN: They're paying attention.

1451

1 THE COURT: Mr. Brafman, check your exhibits and
2 make sure we straighten it out on Wednesday.

3 MR. BRAFMAN: I will. Thank you.

4 THE COURT: I think the juror said 1230.

5 THE COURTRoom DEPUTY: He said 1230 but that you
6 wrote 130 or 150.

7 You wrote a different number.

8 MR. BRAFMAN: I am delighted that they are paying
9 attention.

10 (Matter adjourned to Wednesday, July 5, 2017, at
11 9:00 o'clock a.m.)

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1 I N D E X

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